TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 156.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

RAILROAD COMMISSION OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED JUNE 10, 1904.

(22,762)

(23,752)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 198.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

RAILROAD COMMISSION OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

INDEX.

	Original.	Print
Petition for writ of error	1	1
Order allowing writ of error	1	1
Writ of error	3	1
Citation and service	6	3
Bond on writ of error	8	3
Assignment of errors	11	5
Præcipe for record	14	7
Filing in supreme court of State	16	8
Transcript from the circuit court for Dane county	17	8
Notice of appeal and acceptance of service	17	9
Bond on appeal	18	9
Summons	20	10
Complaint	21	10
Exhibit A—Time table of Chicago, Burlington & Quincy Railroad Company	27	14
Exhibit B—Opinion of the Railroad Commission of Wisconsin in the case of Schlosstein *vs.* Chicago, Burlington & Quincy Railroad Company	29	15
Answer	36	20
Findings of fact and conclusions of law	41	22
Memorandum of decision	43	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1914.

	Original.	Print
Judgment	47	24
Bill of exceptions	49	26
Transcript before Railroad Commission of Wisconsin in the case of Schlosstein *vs.* Chicago, Burlington & Quincy Railroad Company	50	27
Petition	50	27
Evidence	53	28
Testimony of John F. Schlosstein	53	28
Testimony of P. S. Eustis	59	32
Exhibit "A"—Statement ticket sales in Wisconsin of Chicago, Burlington & Quincy Railroad Company, year ending June 30, 1911	74	42
Exhibit "B"—Statement ticket sales in Wisconsin of Chicago, Burlington & Quincy Railroad Company, year ending June 30, 1910, etc	75	43
Testimony of P. S. Eustice	78	46
Exhibit 1—Comparative statement of the population of certain towns in Wisconsin	80	47
Exhibit 2—Comparative statement of population of towns in Wisconsin	82	49
Exhibit 3—Comparative statement of population of certain counties in Wisconsin	82	50
Testimony of D. Cunningham	88	54
Testimony of P. S. Eustis (recalled)	91	56
Plaintiff rests	93	57
Evidence for defendant	93	57
Exhibit 4—Certified copy of deed of Chicago, Burlington & Quincy Railroad Company, June 1, 1899 (not set out here)	93	57
Plaintiff's request for findings of fact and conclusions of law	94	58
Exceptions to findings, &c	96	58
Judge's certificate to bill of exceptions	98	59
Stipulation that bill of exceptions be certified to and settled by court	99	59
Clerk's return to appeal	101	59
Order of argument and submission	103	60
Judgment	104	60
Opinion, Vinje, J.	105	61
Dissenting opinion, Timlin, J.	116	72
Clerk's certificate	120	76

1 STATE OF WISCONSIN:

In the Supreme Court, August, 1912, Term.

No. 113.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff and Appellant,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant and Respondent.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled cause, the plaintiff and appellant therein hereby prays a writ of error from the said decision and judgment to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

CHESTER M. DAWES AND
WOODWARD & LEES,
Attorneys for Plaintiff and Appellant.

STATE OF WISCONSIN,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by the Chicago, Burlington & Quincy Railroad Company to the Railroad Commission in the sum of One Thousand Dollars.

Dated May 10th, 1913.

[Seal Supreme Court of Wisconsin.]

JNO. B. WINSLOW,
Chief Justice, Supreme Court of Wisconsin.

2 [Endorsed:] State of Wisconsin. In Supreme Court. Chicago, Burlington & Quincy Railroad Company, Plaintiff & Appellant, vs. Railroad Commission of Wisconsin, Defendant & Respondent. Petition for Writ of Error and order allowing same. Filed May 10, 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

3 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or

some of you, being the highest Court of law or equity of the said state in which a decision could be had in the said suit between Chicago, Burlington & Quincy Railroad Company, a corporation, and Railroad Commission of Wisconsin, wherein was drawn in question the validity of a statute or, or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Chicago, Burlington & Quincy Railroad Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

4 Witness the Honorable Edward D. White, Chief Justice of the United States, the 10th day of May in the year of our Lord one thousand nine hundred and thirteen.

[Seal U. S. District Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY,
Clerk District Court of the United States for the Western District of Wisconsin,
By FRED W. FRENCH,
Deputy Clerk.

Allowed May 10th, 1913, petition for writ and assignment of errors having been first duly filed.

[Seal Supreme Court of Wisconsin.]

JNO. B. WINSLOW,
Chief Justice, Supreme Court of Wisconsin.

5 [Endorsed:] State of Wisconsin. In Supreme Court. Chicago, Burlington & Quincy Railroad Company, Plaintiff & Appellant vs. Railroad Commission of Wisconsin, Defendant & Respondent. Writ of Error. Filed May 10 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

6 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Railroad Commission of Wisconsin, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Wisconsin, wherein Chicago, Burlington & Quincy Railroad Company is plaintiff in error and you are defendant in error, to show cause if any there be why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Wisconsin this tenth day of May, 1913.

[Seal Supreme Court of Wisconsin.]

JNO. B. WINSLOW,
Chief Justice, Supreme Court of Wisconsin.

Attest:

CLARENCE KELLOGG,
Clerk Supreme Court of Wisconsin.

MADISON, WISCONSIN, May 10, 1913.

I, attorney of record for the defendant in eror in the case mentioned in the foregoing citation, hereby acknowledge due service of the said above citation and enter an appearance in the Supreme Court of the United States.

WALTER C. OWEN,
Attorney General of the State of Wisconsin and Attorney for Railroad Commission of Wisconsin.

7 [Endorsed:] State of Wisconsin. In Supreme Court. Chicago, Burlington & Quincy Railroad Company, Plaintiff & Appellant vs. Railroad Commission of Wisconsin, Defendant & Respondent. Citation. Filed May 10 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

8 **(Copy.)**

State of Wisconsin.

Department of Insurance.

This is to Certify, that the United States Fidelity & Guaranty Company of Baltimore, Maryland, has complied with all the pro-

visions of law, and is authorized to transact the business of (7) fidelity or suretyship insurance in this State from the first day of March, 1913, until the twenty-eighth day of February, 1914, inclusive, unless its authority be sooner revoked.

Witness my hand and official seal, at Madison, Wisconsin, this first day of March 1913.

[SEAL.] HERMAN L. EKERN,
Commissioner of Insurance.

No. 10.

I, Herman L. Ekern, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, issued to the United States Fidelity & Guaranty Company of Baltimore, Maryland *Company* and now on file and of record in my office and in my lawful custody, and that such copy is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 31st day of April, A. D. 1913.

[SEAL.] HERMAN L. EKERN,
Commissioner of Insurance.

9 (Copy.)

STATE OF WISCONSIN:

In Supreme Court, August Term, 1912.

No. 113.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff in Error,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant in Error.

Bond.

Know All Men By These Presents, That we, Chicago, Burlington and Quincy Railroad Company as principal, and United States Fidelity & Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto Railroad Commission of Wisconsin, in the sum of One Thousand Dollars to be paid to said Railroad Commission of Wisconsin, to which payment well and truly to be made we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st. day of April, 1913.

Whereas the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the Uited States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Wisconsin.

Now therefore, the condition of this obligation is such that if the

above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then thos obligation to be void, otherwise to remain in full force and effect.

[Official Seal of Chi., Burlington & Quincy Railroad Co.]

CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY, [L. S.]
By T. S. HOWLAND, *Vice-President.*
UNITED STATES FIDELITY AND
GUARANTY COMPANY, [L. S.]

[Seal of the United States Fidelity & Guaranty Company, Incorporated, 1896.]

By J. L. PETTINGILL,
Its Attorney in Fact.

Attest:
H. W. WEISS,
Asst. Secretary.

10 Bond approved and to operate as a supersedeas dated May 10th, 1913.

[Seal Supreme Court of Wisconsin.]

JNO. B. WINSLOW,
Chief Justice, Supreme Court of Wisconsin.

10½ [Endorsed:] Filed May 10, 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

11 STATE OF WISCONSIN:

In Supreme Court, August, 1912, Term.

No. 113.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff and Appellant,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant and Respondent.

Assignment of Errors.

Now comes the above plaintiff and appellant and files herewith its petition for a writ of error and says that there are errors in the records, proceedings and final judgment in the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment:

The Supreme Court of Wisconsin erred in holding and deciding that the Statute of the State of Wisconsin Chapter 483 of the Session Laws of Wisconsin for the year 1911 was valid. The validity of said statute was denied and drawn in question by the

plaintiff on the ground of its being repugnant to the Constitution of the United States and in contravention thereof.

Said errors are more particularly set forth as follows:

Said Supreme Court of Wisconsin erred in holding and deciding

First. That said Statute, Chapter 483 of the Session Laws of Wisconsin for the year 1911, did not abridge the privileges and immunities of citizens and of this plaintiff as guaranteed by the Fourteenth amendment of the federal constitution.

Second. That said statute as applied to this plaintiff, did not deprive plaintiff of its property without due process of law
12 contrary to the provisions of Section 1 of the Fourteenth Amendment to the federal constitution.

Third. That said statute, as applied to this plaintiff, in the circumstances disclosed by the record of proceedings did not unduly obstruct or burden commerce among the several states, in contravention of Section 8 of Article I of the federal constitution and of the laws enacted by congress in pursuance thereof.

Fourth. That the Order of the Railroad Commission of Wisconsin, dated November 20th, 1911, requiring this plaintiff thereafter to stop one passenger train each way daily at Cochrane, in addition to the passenger trains which then and theretofore stopped at said Cochrane, was neither unreasonable nor unlawful.

Fifth. That said order of said Railroad Commission is not an unwarranted interference with or obstruction of interstate commerce.

Sixth. That said order of said Railroad Commission was not confiscatory and did not take plaintiff's property without due process of law, contrary to the provisions of said Section 1 of the Fourteenth Amendment to the federal constitution.

For which errors, the plaintiff, Chicago, Burlington & Quincy Railroad Company prays that the said judgment of the Supreme Court of the State of Wisconsin, dated March 11th, 1913, be reversed and a judgment entered in favor of this plaintiff Company and for costs.

CHESTER M. DAWES AND
WOODWARD & LEES,
Attorneys for Chicago, Burlington & Quincy Railroad Company.

13 [Endorsed:] State of Wisconsin. In Supreme Court. Chicago, Burlington & Quincy Railroad Company, Plaintiff & Respondent vs. Railroad Commission of Wisconsin, Defendant & Appellant. Assignment of Errors. Filed May 10, 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

14 STATE OF WISCONSIN:

In Supreme Court.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff and Appellant,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant and Respondent.

Chicago, Burlington & Quincy Railroad Company, above named plaintiff and appellant, having sued out a Writ of Error from the Supreme Court of the United States to the said Supreme Court of Wisconsin in order to obtain a review and reversal of the judgment of said Supreme Court of Wisconsin in the said cause, dated and entered March 11th, 1913, it is hereby agreed and stipulated by and between the parties to said cause, that the Clerk of the Supreme Court of Wisconsin, in making up his return to the Supreme Court of the United States upon said Writ of Error shall include in such return only the following papers as they appear and are paged in the record on appeal now in his office, namely:

Summons—page 1.
Complaint—pages 2-7.
Decision of Railroad Commission—pp. 10-14.
Answer of Defendant—pp. 15-18.
Findings of Fact and Conclusions of Law—pp. 20, 21.
Judgment of Circuit Court—p. 25.
The Bill of Exceptions—pp. 25-89, but omitting therefrom the following:

(*a*) Decision of Railroad Commission—printed and marked page 55.

(*b*) The deed exhibit No. 4 contained in pp. 73-79.

15 (*c*) The exhibits Nos. 5, 6, 7 and 8 and descriptions thereof and references thereto on pp. 80, 81.

(*d*) Reporter's Certificate p. 82.

(*e*) Findings of Fact and Conclusions of Law on p 84.

(*f*) Paragraph beginning "It is stipulated and agreed" on p. 89.

Include—Certificate of Judge to Bill of Exceptions—p. 89. Omit stipulation for settlement of Bill.
Include—Notice of Appeal—p. 91.
Undertaking—pp. 92-94.
Certificate of Clerk Circuit Court—p. 95.

The Clerk will add the citation and proof of service, Writ of Error and his return thereto, petition for writ, allowance of writ, bond and approval of same, assignment of errors, certificate of transcript at such places and in such order as is customary.

Dated and signed this 12th day of May, 1913.

CHESTER M. DAWES,
WOODWARD & LEES,
Attorneys for Plaintiff in Error.
W. C. OWEN,
Attorney General of Wisconsin;
BYRON H. STEBBINS,
First Asst. Atty. Genl.,
Attorneys for Defendant in Error.

[Endorsed:] Filed May 12, 1913. Clarence Kellogg, Clerk of Supreme Court, Wis.

16 Plea Before the Supreme Court of the State of Wisconsin, at a Term Thereof Begun and Held at the Capitol in Madison, the Seat of Government of said State, on the First Tuesday, to-wit: the Seventh Day of January, A. D. 1913.

Present:

Hon. John B. Winslow, Chief Justice.
Hon. Roujet D. Marshall.
Hon. Robert G. Siebecker.
Hon. James C. Kerwin.
Hon. William H. Timlin.
Hon. John Barnes and
Hon. Aad John Vinje, Justices.
Clarence Kellogg, Clerk.

Be it remembered that heretofore, to-wit: on the 11th day of October in the year of Our Lord One Thousand Nine Hundred and Twelve came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Chicago, Burlington & Quincy Railroad Company, by its attorneys, and filed in said Court its certain Notice of Appeal and Undertaking, according to the Statute in such case made and provided, and also the return to such appeal of the clerk of the circuit court of Dane County, in said State, in words and figures following that is to say:

17 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant.

Please take notice, That Chicago, Burlington & Quincy Railroad Company, the above named plaintiff, hereby appeals to the Supreme Court of the State of Wisconsin, from the Judgment rendered and entered in this action in the Circuit Court for the County of Dane, the 24th day of July, 1912, in favor of defendant Railroad Commission of Wisconsin and against said plaintiff, dismissing the complaint in said action and for thirty-nine and 58/100 ($39.58) Dollars costs, and from the whole thereof.

Dated the 24th day of September, 1912.

WOODWARD & LEES,
Plaintiff's Attorneys.

To L. H. Bancroft, Attorney General; Russell P. Jackson, Deputy Attorney General; Byron H. Stebbins, Assistant Attorney General, and to Nissen P. Stenjem, Clerk of the Circuit Court for Dane County, Wis.

Due service of above notice admitted this 30th day of September, 1912.

L. H. BANCROFT,
Att'y Gen'l.
RUSSELL JACKSON,
Deputy Attorney General.
BYRON H. STEBBINS,
Assistant Attorney General.
NISSEN P. STENJEM,
Clerk of Circuit Court, Dane Co., Wis.

18 State of Wisconsin.

Department of Insurance.

This is to Certify, that the United States Fidelity & Guaranty Company of Baltimore, Maryland, has complied with all the provisions of law, and is authorized to transact the business of (7) fidelity or suretyship insurance in this State from the first day of March, 1913, until the twenty-eighth day of February, 1914, inclusive, unless its authority be sooner revoked.

Witness my hand and official seal, at Madison, Wisconsin, this first day of Marc*y*, 1912.

[SEAL.] HERMAN L. EKERN,
Commissioner of Insurance.

No. 5.

I, Herman L. Ekern, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, issued to the United States Fidelity & Guaranty Company of Baltimore, Md., *Company* and now on file and of record in my office and in my lawful custody, and that such copy is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 30th day of September, A. D. 1913.

[SEAL.] ——— ———,
Commissioner of Insurance.

19 STATE OF WISCONSIN:

In the Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
RAILROAD COMMISSION OF WISCONSIN, Defendant.

Whereas, on the 24th day of July, A. D. 1912, in the Circuit Court of Dane County, Wisconsin, Railroad Commission of Wisconsin, the above-named defendant, recovered a judgment against Chicago, Burlington & Quincy Railroad Company, the above-named

plaintiff, for Thirty-nine 58/100 ($39.58) Dollars costs, amounting in the aggregate to Thirty-nine and 58/100 ($39.58) Dollars damages and costs. And the above named appellant, feeling aggrieved thereby, intends to appeal therefrom to the Supreme Court of the State of Wisconsin;

Now therefore, I, the United States Fidelity & Guaranty Company, of Baltimore, Maryland, and duly authorized to do surety business in the State of Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that the said appellant will pay all costs and damages which may be awarded against it on said appeal, not exceeding Two Hundred and Fifty Dollars ($250.)

[Seal of United States Fidelity & Guaranty — of Baltimore, Md.]

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By J. L. PETTINGILL, *Its Attorney in Fact.*

20 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
RAILROAD COMMISSION OF WISCONSIN, Defendant.

The State of Wisconsin, to the said Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint of which a copy is herewith served upon you.

WOODWARD & LEES,
Plaintiff's Attorneys.

Post Office Address, La Crosse, La Crosse County, Wisconsin.

21 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
RAILROAD COMMISSION OF WISCONSIN, Defendant.

The above named plaintiff, by Woodward & Lees its attorneys, complains of the above named defendant and for cause of action alleges:

1. That during all the times hereinafter mentioned plaintiff was and now is a railroad corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and operating a line of railroad in the State of Wisconsin and various other states.

2. That the line of railroad operated by the plaintiff in the state of Wisconsin is part of the main line of said plaintiff's railroad running from the city of Chicago in the state of Illinois to the cities of Minneapolis and St. Paul in the state of Minnesota. That its said railroad enters the state of Wisconsin at a point where the southern boundary line of said state touches the Mississippi River, and extends along the easterly bank of said Mississippi River to the city of Prescott in Pierce County, where said railroad crosses the St. Croix River and enters the state of Minnesota. That the total length of its line in said state of Wisconsin is two hundred and twenty-three and 13/100 (223.13) miles.

3. That said line of railroad was constructed by the Chicago, Burlington & Northern Railroad Company in the year 1885, and that the plaintiff is the successor of said Chicago, Burlington & Northern Railroad Company. That from the time the said railroad was constructed up to May 1909, the train service for the cities and towns in Wisconsin was made an incident to through train service between Minneapolis on the one hand and Chicago and St.
22 Louis on the other, but upon the last named date, to meet the competition of competing lines both via Minneapolis and via Omaha, not only between Chicago and St. Louis and Minneapolis, but between Chicago and the entire northwest, it became necessary for the plaintiff to put on additional through trains and to quicken the speed of others, and as such through trains could only make an occasional stop at the more important points in Wisconsin, the said plaintiff thereupon instituted a separate local train service, practically for the sole benefit of Wisconsin towns and cities. This local train service which runs between Savanna and Minneapolis is shown in Exhibit A as trains 53 and 54.

4. That from the time the said railroad was constructed up to the present time, there has been little increase in the population of the various counties, cities and villages through which said railroad runs, and at no time, even including the present, has the local passenger traffic on the line of the said plaintiff in the state of Wisconsin been sufficient to pay the expense of operating the local trains now run by said plaintiff, and that said plaintiff now provides and has during all the time it has operated the said railroad in the state of Wisconsin, provided adequate, reasonable, and ample facilities for the transportation of passengers at Cochrane and at the various cities and villages located on its line in said state of Wisconsin.

5. The following is a list of stations containing two hundred (200) inhabitants or more, located on the line of the plaintiff in the state of Wisconsin and the population of each:

Prescott	936
Bay City	252
Maiden Rock	337

Stockholm		204
Pepin		397
Alma		1,011
Cochrane		250
Fountain City		1,031
Trempealeau		535
Onalaska		1,146
La Crosse		30,417
Stoddard		343
Genoa		275
De Soto		331
	Ferryville	225
23	Lynxville	274
	Prairie du Chien	3,149
Bagley		275
Glen Haven		325
Cassville		890
Potosi		464

6. That the line of the plaintiff within the state of Wisconsin is so located that it is unusually limited in the amount of local business it receives in said state of Wisconsin, for the reason that it can draw no traffic west of the Mississippi River, its said railroad being paralleled throughout its entire length in the state of Wisconsin by the line of the Chicago, Milwaukee & St. Paul Railway Company, which is located on the westerly bank of said river.

7. That the line of said plaintiff's railroad from the city of Chicago to the city of Minneapolis is four hundred and forty-two (442) miles in length and that the lines of its three principal competitors between said points are shorter than the plaintiff's lines, to-wit: the Chicago, Milwaukee & St. Paul Railway Company's line is four hundred and twenty (420) miles, the Chicago & Northwestern Railway Company's line is four hundred and twelve (412) miles, and the Chicago, Great Western Railway Company's line is four hundred and thirty-five (435) miles. That in operating plaintiff's passenger trains between Chicago and Minneapolis it is necessary to make the same schedule time that is made by the shorter lines of its competitors.

8. Plaintiff avers that in addition to the trains aforesaid, which it has operated for the purpose of providing, and which have in fact furnished at all times reasonable and ample facilities to the smaller towns and villages like Cochrane and those of similar population and business, it has for several years operated over said line of railroad through Wisconsin two daily through trains running between Chicago, Illinois, and Seattle, Washington, and Portland, Oregon, in connection with the Northern Pacific and Great Northern Railway Companies, for the purpose of securing a share of the large amount of passenger travel between said cities and the larger cities like St. Paul and Minneapolis, intermediate
24 thereto; that said through trains have at all times been operated for the accommodation of such through interstate traffic,

and not for the local traffic between points either in Wisconsin or the other states through which such trains pass, which trains do not and cannot stop at Cochrane or other small towns; that there are a number of independent competing routes for passenger travel between Chicago and North Pacific Coast points, viz.—the Union Pacific and its connections like the Chicago & Northwestern, east of the Missouri River, operating through train service, and also the Chicago, Milwaukee & St. Paul and its controlled road the Chicago, Milwaukee & Puget Sound Railway, which has a direct line not only to St. Paul and Minneapolis but to Butte, Spokane and North Pacific Coast points; that the competition in passenger traffic and service between said rival routes running between Chicago and North Pacific Coast Terminals, as well as between Chicago and St. Paul and Minneapolis and cities like Butte and Spokane, which are reached by said competing lines of railroad, has been for many years past and is now very keen, and plaintiff, and the Northern Pacific and Great Northern Railway Companies, in order to secure and keep any considerable portion of such traffic as against their said competitors, must maintain fast schedules for their through trains, no slower than now in force; that notwithstanding the excellent condition of its roadbed and that of its said connecting lines, it is impossible, either in regard to the public safety or to the speed necessary to accommodate and secure such through traffic, to make such schedules and retain said through business if said trains are required to stop at the smaller stations as required by statute; that if said through trains are required to stop at small towns and villages for the accommodation of local traffic, not only this plaintiff and its said connecting lines would lose a large part of the through interstate traffic which they have now built up, and in consequence this plaintiff would lose a large share of its present revenue derived from such through traffic, but such through passengers between the aforesaid termini and the other many large and important cities intermediate thereto would be deprived of all reasonable accommodations through the increasing of the schedule time of such through trains, so that the stoppage of said two trains at Cochrane and other small towns in Wisconsin would directly interfere with, burden and obstruct such through traffic and inflict great pecuniary loss on plaintiff.

That if the state of Wisconsin can lawfully require the stoppage of these through trains for the accommodation of its local traffic, then all the other states traversed by said trains between Chicago and North Pacific Coast points can make like requirements for the accommodation of the small towns within such states, so that in the event such alleged power in other states is exercised, and it will be, in order to prevent local traffic in Wisconsin having a preference over that in other states it will be impossible for plaintiff and the Great Northern and Northern Pacific Companies to operate such through trains and secure any portion of such through competitive traffic, besides greatly hindering and delaying through interstate traffic between the larger points on the said railroads which are not reached by other lines of railway.

9. That in operating its said through limited passenger trains on said line it is impossible to make reasonable time without limiting the number of stops to the more important stations on the line in the state of Wsconsin, which stops are indicated in the said Exhibit A. That it would seriously interfere with the passenger business of said company to increase the number of stops now made by its said limited through trains and that by increasing such number of stops, the interests of the traveling public would be injured instead of benefited.

10. That on the 20th day of November, 1911 said defendant made an order, a copy of which is hereto attached and made a part hereof and marked Exhibit B, requiring the plaintiff to stop two additional passenger trains at the village of Cochrane in Buffalo County, Wisconsin, for the sole reason that said village contained more than two hundred inhabitants and was entitled to have two additional stops made by reason of the provisions of Chapter 483 of the Laws of Wisconsin for 1911.

Plaintiff further alleges that said Chapter 483 of the Laws
26 of 1911 and order made in pursuance thereto are unconstitutional and void in so far as it is provided that if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every station containing two hundred inhabitants or more. That the provisions of said law if carried into effect would require the plaintiff to stop two of its limited through trains at thirteen additional stations in the state of Wisconsin and that the requiring of such additional stops would be an unwarrantable interference with interstate commerce.

Wherefore plaintiff prays judgment that such order shall be vacated and set aside and that meanwhile the same shall be suspended and stayed until the final determination of this action.

WOODWARD & LEES,
Plaintiff's Attorneys.

STATE OF ILLINOIS,
County of Cook, ss:

P. S. Eustis, being first duly sworn, says that he is an officer of the Chicago, Burlington & Quincy Railroad Company, to-wit: its Passenger Traffic Manager, and makes this verification on its behalf; that he has read the foregoing complaint, knows the contents thereof, and that the same is true of his own knowledge; that the reason why this verification is not made by plaintiff is that the plaintiff is a corporation, and that deponent is familiar with the facts.

P. S. EUSTIS.

Subscribed and sworn to before me this 16th day of December, 1911.

J. H. PETTIBONE,
[SEAL.] *Notary Public, Cook County, Illinois.*

(Here follow tables marked pages 27 and 28.)

Chicago, Dubuque, LaCrosse, St. Paul Minneapolis.

Table 8

Mls	NORTHBOUND	51 Daily	47 Daily	49 Daily	19 Rt.Sun.	115–21 Daily	41 Rt.Sun.	91 Frt. Rt.Sun.
		AM	PM	PM	AM	PM	PM	
0	Chicago.....Lv	9.30	6.30	10.15	8.00	a 2.15	4.30	.....
21	Downer's Grove, 1.....	..b	..b	.....	8.49	3.22	5.10	.....
37	Aurora, 1, 11, 12, 14, 16, 17, 18, 19, 20.....{Ar / Lv	10.25 / 10.28	7.35 / 7.40	11.15 / 11.28	9.20 / 9.35	4.10 / 4.20	5.35 / 5.45	AM / 5.50
45	Sugar Grove.....	.....	.....	.....	9.53	4.49	6.07	6.25
50	Big Rock.....	.....	.....	.....	10.07	4.58	6.17	6.52
55	Hinckley.....	.....	.....	.....	10.23	5.09	6.33	7.22
62	Waterman.....	.....	.....	.....	10.36	5.15	6.36	8.00
67	Shabbona, 14, 19.....	.....	.....	.....	10.45	5.25	6.45	9.20
72	Lee.....	.....	.....	.....	10.55	PM	6.55	9.55
77	Steward.....	.....	.....	.....	11.05	.....	7.15	10.10
83	Rochelle, 17.....{Ar / Lv	11.40	9.01	12.42	11.17 / 11.17	.....	7.35	10.25 / 11.00
109	Rockford, 17.....{Ar / Lv	..... / †10.40	.....	s 4.45 / †12.28	..... /	.....	† 8.40 / † 4.20	..... / †10.40
86	Flag Center, 17.....	.....	.....	.....	11.30	.....	7.48	11.54
92	Chana.....	.....	.....	.....	AM	.....	7.55	12.15
96	Honey Creek.....	.....	.....	.....	.....	.....	8.05	..s..
99	Oregon, 18.....	12.07	9.35	1.06	.....	.....	8.16	1.25
107	Stratford.....	.....	.....	.....	.....	.....	8.30	2.00
111	Polo.....	12.30	9.58	.....	.....	.....	8.45	2.20
117	Hazelhurst.....	.....	.....	.....	.....	.....	8.55	2.40
122	Milledgeville.....	12.42	..e..	.....	.....	.....	9.05	2.58
129	Chadwick.....	s 1.00	..e..	.....	53 Daily	91 Frt. Rt.Sun.	9.20	3.20
134	Daggetts.....	.....	.....	.....	.....	.....	9.30	3.40
138	Big Cut.....	.....	.....	.....	.....	.....	9.40	4.00
145	Savanna, 9, 12.....{Ar / Lv	1.30 / 1.40	10.55 / 11.10	2.30 / 2.35	AM / 3.50	AM / 8.15	9.55 / PM	5.35 / PM
157	Hanover.....	..e..	.....	.....	4.05	9.00	.....	.....
171	Galena Jct.....Lv	2.25	11.50	3.14	4.42	10.00	.....	.....
176	Galena, 9.....{Ar / Lv	2.15 / 2.25	12.10 / 11.20	3.35 / 2.50	5.00 / 4.25	.....	.....	.....
184	E. Dubuque, Ill.....Lv	2.50	12.18	3.40	5.05	11.10	.....	.....
186	Dubuque, Ia., 9.....{Ar / Lv	2.35 / 2.55	12.32 / 11.59	3.50 / 3.20	5.20 / 4.50	.....	.....	.....
199	Potosi, Wis.....Lv	3.12	.....	.....	5.36	12.28	93 Frt. Rt.Sun.	.....
205	McCartney.....	..e..	.....	.....	5.48	12.40		.....
212	Cassville.....	3.33	12.59	.....	6.00	2.00		.....
223	Glen Haven.....	..e..	.....	.....	6.16	3.47		.....
228	Bagley.....	..e..	.....	.....	6.25	4.30		.....
231	Wyalusing.....	..e..	.....	.....	6.32	4.50	FM	.....
239	Prairie du Chien, 9.....	4.15	1.45	5.10	6.45	6.00	12.40	.....
254	Lynxville.....	..e..	.....	.....	7.10	FM	1.20	.....
261	Ferryville.....	..e..	.....	.....	7.22	.....	1.35	.....
269	De Soto.....	..e..	.....	.....	7.37	.....	2.00	.....
274	Victory.....	..e..	.....	.....	7.50	.....	2.15	.....
280	Genoa.....	..e..	.....	.....	8.00	91 Frt. Rt.Sun.	2.30	.....
286	Stoddard.....	..e..	.....	.....	8.10		2.45	.....
293	Calvert.....	..e..	.....	.....	s 8.18		s 4.05	.....
295	South Jct.....	..e..	.....	.....	.....	.....	.....	.....
305	La Crosse, 9.....	5.45	3.15	6.50	8.40	AM	.....	.....
301	Grand Crossing.....	5.05	3.40	7.10	9.05	6.30	6.35	.....
309	Onalaska.....	..e..	.....	.....	9.10	6.40	FM	.....
311	Lytle.....	..e..	.....	.....	s 9.20	s 7.00	.....	.....
317	Trempealeau.....	..e..	.....	.....	9.30	7.33	.....	.....
328	E. Winona, Wis.....Lv	6.42	4.21	7.44	9.46	8.30	.....	.....
338	Winona, Minn., 9.....{Ar / Lv	7.05 / 6.20	4.45 / 3.55	8.10 / 7.20	10.10 / 9.20	.....	.....	.....
334	Fountain City, Wis.....Lv	6.57	.....	.....	10.00	9.30	.....	.....
343	Cochrane.....	..e..	.....	.....	10.17	10.56	.....	.....
351	Alma.....	7.25	5.03	8.22	10.46	11.32	.....	.....
359	Nelson.....	..e..	.....	.....	11.00	12.06	.....	.....
363	Trevino.....	..e..	.....	.....	11.07	12.18	.....	.....
366	Pepin.....	..e..	.....	.....	11.15	12.40	.....	.....
373	Stockholm.....	..e..	.....	.....	11.27	1.10	.....	.....
379	Malden Rock.....	..e..	.....	.....	11.41	1.40	.....	.....
386	Bay City.....	..e..	.....	.....	11.52	2.10	.....	.....
391	Hager.....	..e..	.....	.....	12.01	2.45	.....	.....
396	Diamond Bluff.....	..e..	.....	.....	12.12	3.15	.....	.....
408	Prescott, Wis.....	8.45	6.33	9.48	12.33	4.00	.....	.....
409	Point Douglas, Minn.....	..e..	.....	.....	s 12.43	.....	.....	.....
410	Hastings.....	..e..	.....	.....	12.46	4.15	.....	.....
420	Pullman Ave.....	.....	.....	.....	g	4.35	.....	.....
421	St. Paul Park.....	.....	.....	.....	g	4.41	.....	.....
433	Newport.....	.....	.....	.....	g	4.50	.....	.....
429	Dayton's Bluff.....	.....	.....	.....	.....	5.20	.....	.....
431	St. Paul.....Ar	10.00	7.20	10.45	.....	5.30	.....	.....
442	Minneapolis.....Ar	10.55	8.05	11.40	2.05	FM	.....	.....
		PM	AM	AM	PM			

SOUTHBOUND	52 Daily	58 Daily	48 Daily	50 Daily	54 Daily	92 Frt. Rt.Sun.		
	AM	PM	PM	PM	AM			
Minneapolis.....Lv	7.40	1.50	7.45	10.25	5.30	.....	.....	.....
St. Paul.....	8.40	2.30	8.30	11.30	6.05	AM	.....	.....
Dayton's Bluff.....	.....	.....	.....	.....	6.10	5.30	.....	.....
Newport.....	.....	.....	.....	.....	6.20	.....	.....	.....
St. Paul Park.....	.....	.....	.....	.....	.....	.....	.....	.....
Pullman Ave.....	.....	.....	.....	.....	.....	.....	.....	.....
Hastings.....	.....	.....	.....	.....	6.41	7.10	.....	.....
Point Douglas, Minn.....	.....	.....	.....	.....	s 6.46	.....	.....	.....
Prescott, Wis.....	9.25	7.10	9.08	12.10	7.04	7.40	.....	.....
Diamond Bluff.....	.....	.....	.....	.....	7.19	8.10	.....	.....
Hager.....	.....	.....	.....	.....	7.28	8.30	.....	.....
Bay City.....	.....	.....	.....	.....	7.39	9.13	.....	.....
Malden Rock.....	.....	5.04	.....	.....	7.53	10.05	.....	.....
Stockholm.....	.....	.....	.....	.....	8.05	10.35	.....	.....
Pepin.....	.....	.....	.....	.....	8.18	11.15	.....	.....
Trevino.....	.....	.....	.....	.....	8.24	11.40	.....	.....
Nelson.....	.....	.....	.....	.....	8.33	12.06	.....	.....
Alma.....	10.46	5.45	10.30	1.35	8.49	12.25	.....	.....
Cochrane.....	.....	.....	.....	.....	9.04	1.10	.....	.....
Fountain City, Wis.....Lv	.....	9.15	.....	.....	9.35	2.02	.....	.....
Winona, Minn., 9.....{Ar / Lv	11.45 / 11.00	9.55 / 9.10	11.30 / 10.45	2.35 / 1.50	10.10 / 9.20	.....	.....	.....
E. Winona, Wis.....Lv	11.24	9.30	11.08	2.14	9.46	1.00	94 Frt. Rt.Sun.	.....
Trempealeau.....	.....	.....	.....	.....	9.58	1.20		.....
Lytle.....	.....	.....	.....	.....	s10.07	s 1.30		.....
Onalaska.....	.....	.....	.....	.....	10.15	1.40	AM	.....
Grand Crossing.....	12.10	10.15	11.53	3.00	10.30	1.58	6.15	.....
La Crosse, 9.....	12.25	10.25	12.05	3.15	10.45	PM		.....
South Jct.....	.....	.....	.....	.....	.....	.....	.....	.....
Calvert.....	.....	.....	.....	.....	s10.57	.....	s 6.39	.....
Stoddard.....	.....	.....	.....	.....	11.05	.....	7.00	.....
Genoa.....	.....	.....	.....	.....	11.20	.....	7.26	.....
Victory.....	.....	.....	.....	.....	11.30	93 Frt Rt.Sun.	7.50	.....
DeSoto.....	.....	.....	.....	.....	11.38		8.02	.....
Ferryville.....	.....	.....	.....	.....	11.51		8.38	.....
Lynxville.....	.....	.....	.....	.....	12.05	AM	9.08	.....
Prairie du Chien, 9.....	1.51	11.58	1.30	4.55	12.58	7.00	10.15	.....
Wyalusing.....	.....	.....	.....	.....	1.09	7.30	AM	.....
Bagley.....	.....	.....	.....	.....	1.19	7.45	.....	.....
Glen Haven.....	.....	s12.19	.....	.....	1.28	8.10	.....	.....
Cassville.....	.....	12.30	.....	.....	1.40	9.00	.....	.....
McCartney.....	.....	.....	.....	.....	2.02	9.20	.....	.....
Potosi, Wis.....Lv	.....	s 1.00	.....	.....	2.15	9.40	.....	.....
Dubuque, Ia., 9.....{Ar / Lv	1.35 / 1.00	1.40 / 1.10	3.05 / 2.35	6.40 / 6.10	2.55 / 2.25	.....	.....	.....
E. Dubuque, Ill.....Lv	2.15	1.25	2.49	6.25	2.40	10.45	.....	.....
Galena, 9.....{Ar / Lv	2.05 / 1.20	2.10 / 1.35	3.35 / 2.50	7.05 / 6.30	3.15 / 2.25	.....	.....	93 Frt. Rt.Sun.
Galena Jct.....Lv	3.30	1.52	3.11	6.47	2.58	11.50	43 Rt.Sun.	
Hanover.....	.....	.....	.....	.....	1.45	.....		.....
Savanna, 9, 12.....{Ar / Lv	4.20 / 4.35	2.40 / 2.45	4.10 / 4.25	7.35 / 7.45	3.40 / PM	3.40 / PM	AM / 5.50	AM / 5.15
Big Cut.....	.....	.....	.....	.....	.....	.....	6.07	s 5.30
Daggetts.....	.....	.....	.....	.....	.....	.....	6.17	5.45
Chadwick.....	5.10	.....	..e..	.....	.....	.....	6.27	6.40
Milledgeville.....	5.22	.....	..e..	.....	.....	.....	6.42	7.30
Hazelhurst.....	.....	.....	.....	.....	.....	.....	6.50	7.45
Polo.....	5.43	.....	5.27	8.46	.....	.....	7.01	8.20
Stratford.....	.....	.....	.....	.....	.....	.....	7.10	9.10
Oregon, 18.....	5.58	4.03	6.05	9.10	23 Rt.Sun.	.....	7.25	10.25
Honey Creek.....	.....	.....	.....	.....	.....	.....	7.30	..s..
Chana.....	.....	.....	.....	.....	PM	.....	7.36	10.50
Flag Center, 17.....	.....	.....	.....	.....	5.28	.....	7.48	11.46
Rockford, 17.....{Ar / Lv	6.30 / 4.30	† 9.10 / † 9.10	† 9.10 /	..... / † 6.52	..... / † 4.30	.....	† 9.10 / † 6.55	.....
Rochelle, 17.....{Ar / Lv	6.40	4.25	6.32	9.35	5.38	38 Daily	7.55	12.45
Steward.....	.....	.....	.....	.....	5.41		8.05	1.15
Lee.....	.....	.....	.....	.....	5.51	AM	8.15	1.59
Shabbona, 14, 19.....	.....	.....	.....	.....	6.00	6.25	8.30	2.35
Waterman.....	.....	.....	.....	.....	6.08	6.32	8.40	2.55
Hinckley.....	.....	.....	.....	.....	6.20	6.42	8.51	3.15
Big Rock.....	.....	.....	.....	.....	6.33	6.52	8.59	4.05
Sugar Grove.....	.....	.....	.....	.....	6.43	7.00	9.05	4.40
Aurora, 1, 11, 12, 14, 16, 17, 18, 19, 20.....{Ar / Lv	7.50 / 8.00	5.40 / 5.45	7.52 / 7.55	10.55 / 11.00	7.05 / 7.45	7.18 / 7.30	9.22 / 9.30	5.30 / PM
Downer's Grove, 1.....	.....	.....	.....	.....	.....	8.40	9.58	.....
Chicago.....Ar	9.10	7.02	9.00	11.59	8.45	3.45	10.45	.....
	PM	AM	AM	AM	PM	AM	AM	

Reference Marks: † Except Sunday. s Stop on signal. ¶ Mean.
a Leaves 2.00 p.m. on Saturday; 2.30 p.m. on Sunday.
b Stops on signal for passengers to St. Paul or Minneapolis and beyond.
e Stops to let off passengers from Clinton or south, or from Rochelle or points east.
e Regular stop on Sunday.
g Stops to let off passengers from Hastings or stations south and on Sundays to pick up passengers.
n Except Sunday. o Will not carry baggage to this point.

Equipment of Local Trains: No. 41, leaving Chicago 4.30 p.m.; through coaches Chicago to Savanna. Chicago to Sterling, chair car Chicago to Streator.
No. 43 carries same equipment as No. 41 between same points.
No. 58, leaving Savanna 1.50 a.m., carries coach and smoker through to St. Paul and Minneapolis.
No. 54, leaving Minneapolis 5.30 a.m., St. Paul 6.05 a.m., carries coach and smoker to Savanna.
For equipment of through trains see page 5.

Time from 12.01 midnight to 12.00 noon is shown by LIGHT faced figures, and time from 12.01 noon to 12.00 midnight by HEAVY faced figures.

St. Louis Rock Island, St. Paul, Minneapolis.

Table 9

Mls	NORTHBOUND	47 Daily	49-51 Daily	191 Rt.Sun.	91 Frt Rt.Sun.		11 Rt.Sun.
0	St. Louis, Mo. Lv	8.16	8.19	.....	.....	.....	.....
2	Washington Ave., 2, 4, 10	8.25	8.29	.....	.....	.....	.....
3	East St. Louis, Ill.	8.34	8.38	.....	.....	.....	.....
23	East Alton	9.10	9.04	.....	.....	.....	.....
26	Upper Alton	9.15	s 9.09	.....	.....	.....	.....
27	Woods	s 9.20	s 9.14	.....	.....	.....	.....
35	Brighton	9.35	9.29	.....	.....	.....	.....
40	Piasa	9.45	s 9.37	.....	.....	.....	.....
44	Medora	9.55	9.47	.....	.....	.....	.....
47	Kemper	10.01	s 9.53	.....	.....	.....	.....
53	Rockbridge	10.10	s10.02	.....	.....	.....	.....
57	Greenfield	10.23	10.14	.....	.....	.....	.....
62	Wrights	10.33	s10.24	.....	AM	.....	.....
69	Whitehall	10.47	10.37	.....	11.40	.....	.....
73	W. Roodhouse	10.57	10.46	.....	12.05	.....	.....
74	Barrow	11.02	s10.50	.....	12.10	.....	.....
78	Alsey	11.13	s10.59	.....	12.25	.....	.....
84	Winchester	11.27	11.12	.....	1.15	.....	.....
89	Riggston	11.37	s11.22	.....	1.57	.....	.....
91	Merritt	11.41	s11.26	.....	2.07	.....	.....
94	Chapin	11.53	11.34	.....	4.30	.....	PM
98	Concord, 22	12.08	11.42	.....	5.10	.....	5 22
103	Arenzville	12.20	s11.51	.....	AM	.....	5.32
106	Hagener	s12.28	s11.57	.....	.....	s	5.41
113	Beardstown Ar	12.48	12.10	AM	.....	.....	5 55
	Beardstown Lv	12.50	12.20	4.30	.....	.....	PM
117	Frederick	1.00	s12.29	4.40	.....	.....	.....
122	Browning	1.10	s12.38	4.52	.....	.....	.....
126	Bader	1.21	s12.48	5.01	12-178	.....	.....
130	Astoria	1.32	12.58	5.12	Rt.Sun.	.....	.....
137	Vermont, 25 Ar	1.45	1.15	5 36	AM	.....	.....
137	Vermont, 25 Lv	1.50	1.15	.....	5.55	.....	43
168	Canton, 21	2.00	2.17	.....	6.59	.....	Daily
184	Yates City, 24, 25	2.40	2.50	.....	8.07	.....	AM
206	Galesburg, 1, 6, 7, 21, 24, 26 Ar	4.20	3.38	.....	8.55	.....	AM
	Galesburg, 1, 6, 7, 21, 24, 26 Lv	5.25	4.50	9.05	AM	.....	8.00
214	Henderson	5.35	s 5.00	9.15	.....	.....	8.10
220	Rio Ar	5.46	5.10	9.25	.....	.....	8 25
137	Vermont, 25 Lv	2.00	.....	5.36	.....	.....	AM
143	Table Grove	2.12	.....	5.45	.....	.....	.....
148	Adair	2.25	.....	5.55	.....	.....	.....
152	Epperson	s 2.35	s 6.02	.....	.....	.....	.....
157	Bushnell, 7 Ar	2.50	.....	6.15	.....	.....	.....
	Bushnell, 7 Lv	s 3.00	.....	6.15	.....	.....	.....
162	Walnut Grove	3.12	.....	6.27	.....	.....	.....
166	Youngstown	3.21	.....	6.37	.....	.....	.....
168	Swan Creek	3.27	.....	6.44	.....	.....	.....
173	Roseville	3.38	.....	6.56	.....	.....	.....
179	Larchland	3.51	.....	7.10	.....	.....	.....
185	Monmouth, 1 Ar	4.04	.....	7.26	.....	.....	.....
	Monmouth, 1 Lv	4.19	.....	7.26	.....	.....	.....
192	Gerlaw	4.27	.....	7.40	.....	.....	.....
196	Alexis	4.52	.....	7.54	.....	.....	.....
202	N. Henderson	5.04	.....	8.05	.....	.....	.....
207	Rio Ar	5.15	.....	8.15	.....	.....	.....
207	Rio Lv	5.46	5.10	9.25	.....	.....	.....
212	Alpha, 26	5.53	5.22	9.36	.....	.....	.....
217	Ophiem	6.07	s 5.30	9.42	.....	.....	.....
220	Lynn	6.15	s 5.39	9.50	.....	.....	.....
224	Orion	6.26	5.50	10.00	.....	.....	.....
229	Warner	s 6.35	s 5.58	10.09	.....	.....	45
233	Briar Bluff	6.46	s 6.08	10.19	.....	.....	Rt. Sun.
238	Colona	6.49	6.13	10.24	.....	.....	PM
238	Barstow, 13	6.57	6.28	10.30	.....	.....	5.15
240	Watertown Hospital, 13	.....	m	o	.....	.....	o
243	East Moline, 13	7.10	6.38	10.40	52	.....	5.25
246	Moline, 13	7.23	6.50	10.50	Frt.	.....	5.35
249	Rock Island, Ill., 13 Ar	7.40	¶ 7.10	11.05	Rt. Sun.	.....	5.50
	Rock Island, Ill., 13 Lv	8.00	11.11	AM	AM	.....	PM
252	Davenport, Ia., 13	8.15	11.26	.....	9.00	.....	.....
256	Bettendorf	.....	.....	.....	9.30	.....	.....
261	Pleasant Valley	.....	.....	.....	9.50	.....	.....
263	Tile Works	.....	.....	.....	10.10	.....	.....
266	Le Claire	s 8.45	s11.52	.....	s10.15	.....	.....
272	Princeton	n	n	.....	10.30	.....	85
277	Shaffton	.....	.....	.....	10.50	.....	Frt.
283	Camanche	n	n	AM	11.05	.....	Rt. Sun.
287	Clinton, Ia., 12	9.30	12.39	11.40	11.20	.....	.....
288	East Clinton, Ill., 12	9.35	12.36	11.55	11.30	.....	.....
290	Fulton (for Lyons, Ia., also)	9.45	12.42	12-55	AM	.....	.....
298	Thomson	10.00	12.57	1.30	.....	.....	.....
305	Savanna, 8 Ar	10.25	1.20	2.00	.....	.....	.....
328	Galena, Ill., 8 Ar	11.10	2.15	PM	.....	.....	.....
350	Dubuque, Ia., 8 Ar	12.32	3.35	.....	.....	.....	.....
402	Prairie du Chien, Wis., 8	1.45	4.15	.....	.....	.....	.....
472	La Crosse, Wis., 8	3.15	5.45	.....	.....	.....	.....
491	Winona, Minn., 8	4.45	7.05	.....	.....	.....	.....
594	St. Paul	7.20	10.00	.....	.....	.....	.....
605	Minneapolis Ar	8.05	10.53	.....	.....	.....	.....

SOUTHBOUND	52 Daily	48 Daily	190 Rt.Sun.	81 Frt Rt.Sun.	86 Frt Rt. Sun.	46 Rt. Sun.
Minneapolis Lv	7.40	7.45	.....	.....	.....	.....
St. Paul	8.40	8.30	.....	.....	.....	.....
Winona, Minn., 8	11.00	10.45	.....	.....	.....	.....
La Crosse, Wis., 8	12.28	12.05	.....	.....	.....	.....
Prairie du Chien, Wis., 8	1.51	1.30	.....	.....	.....	.....
Dubuque, Ia., 8	3.00	2.35	.....	.....	.....	.....
Galena, Ill., 8	3.20	2.50	.....	.....	PM	.....
Savanna, 8, 12	4.45	4.15	.....	.....	4.00	.....
Thomson, 12	5.05	s 4.31	.....	.....	4.20	.....
Fulton (for Lyons, Ia., also), 12	5.25	4.47	.....	.....	4.40	.....
East Clinton, Ill., 12	5.30	4.53	.....	PM	5.10	.....
Clinton, Ia., 12	5.40	5.00	.....	1.33	5.25	.....
Camanche	d	s	.....	1.45	PM	.....
Shaffton	.....	.....	.....	2.00	.....	.....
Princeton	s	s	.....	2.15	.....	.....
Le Claire	s 6.18	s 5.36	.....	2.50	.....	.....
Tile Works	.....	.....	.....	s 3.00	.....	.....
Pleasant Valley	.....	.....	.....	3.15	.....	.....
Bettendorf	.....	.....	.....	3.30	.....	.....
Davenport, Ia., 13	6.55	6.08	2.15	3.45	.....	.....
Rock Island, Ill., 13 Ar	7.10	6.20	2.30	4.15	.....	PM
Rock Island, Ill., 13 Lv	7.20	6.35	2.30	PM	.....	6.20
Moline, 13	7.36	6.50	2.42	.....	.....	6.32
East Moline, 13	7.48	7.00	2.51	.....	.....	6.42
Watertown Hospital, 13	o	o	.....	.....	.....	o
Barstow, 13	8.05	7.10	3.04	.....	.....	6.57
Colona	8.13	7.18	3.10	.....	.....	PM
Briar Bluff	.....	7.23	3.15	.....	.....	.....
Warner	s	s 7.33	3.25	.....	.....	.....
Orion	s 8.37	7.43	3.35	.....	.....	.....
Lynn	s 8.47	7.55	3.43	.....	.....	.....
Ophiem	.....	8.04	3.56	.....	.....	.....
Alpha, 26	9.08	8.23	4.00	.....	18	20
Rio Ar	9.21	8.37	4.11	.....	Rt. Sun.	Daily
Rio Lv	9.21	8.37	4.11	.....	AM	PM
Henderson	.....	h	4.22	178-21	8.25	5 28
Galesburg, 1, 6, 7, 21, 24, 26 Ar	9.45	9.05	4.36	Rt. Sun.	8.35	5.56
Galesburg, 1, 6, 7, 21, 24, 26 Lv	10.25	9.15	4.50	.....	8.50	5.50
Yates City, 24, 25	11.20	9.57	.....	s 4.55	.....	PM
Canton, 25	11.58	10.37	.....	5.41	92	.....
Vermont, 25 Ar	1.15	11.40	.....	6.27	Frt.	.....
Rio Lv	.....	8.40	.....	a 7.40	Rt. Sun.	.....
N. Henderson	.....	8.50	.....	.....	6.00	.....
Alexis	.....	9.01	.....	.....	6.20	.....
Gerlaw	.....	9.14	.....	.....	6.45	.....
Monmouth, 1 Ar	.....	9.30	.....	.....	7.05	.....
Monmouth, 1 Lv	.....	9.55	.....	.....	7.25	.....
Larchland	.....	10.07	.....	.....	AM	.....
Roseville	.....	10.18	.....	.....	.....	.....
Swan Creek	.....	10.27	.....	.....	.....	.....
Youngstown	.....	10.33	.....	.....	.....	.....
Walnut Grove	.....	10.43	.....	.....	.....	.....
Bushnell, 7 Ar	.....	10.55	.....	.....	.....	.....
Bushnell, 7 Lv	.....	11.00	.....	.....	.....	.....
Epperson	.....	s11.10	s	.....	.....	.....
Adair	.....	11.20	.....	.....	.....	.....
Table Grove	.....	11.31	.....	.....	.....	.....
Vermont, 25 Ar	.....	11.45	.....	.....	.....	.....
Vermont, 25 Lv	1.15	11.50	.....	.....	.....	.....
Astoria	1.35	12.05	.....	.....	.....	.....
Bader	s 1.47	12.15	.....	.....	.....	.....
Browning	s 2.00	12.28	.....	.....	13	.....
Frederick	s 2.10	12.36	.....	.....	Rt.Sun.	.....
Beardstown Ar	2.20	12.50	.....	92	AM	.....
Beardstown Lv	2.35	1.00	.....	Frt.	6.00	.....
Hagener	s 2.48	s 1.12	.....	Rt.Sun.	6.12	.....
Arenzville	s 2.58	1.22	.....	AM	6.20	.....
Concord, 22	3.11	1.35	.....	8.45	6.30	.....
Chapin	3.21	1.45	.....	9.15	AM	.....
Merritt	s 3.30	1.54	.....	9.30	.....	.....
Riggston	s 3.34	1.57	.....	9.35	.....	.....
Winchester	3.45	2.08	.....	10.00	.....	.....
Alsey	s 3.58	2.20	.....	10.25	.....	.....
Barrow	s 4.07	2.29	.....	10.40	.....	.....
W. Roodhouse	s 4.11	2.33	.....	10.57	.....	.....
Whitehall	4.21	2.43	.....	11.10	.....	.....
Wrights	s 4.36	2.57	.....	.....	.....	.....
Greenfield	4.45	3.13	.....	.....	.....	.....
Rockbridge	4.56	3.26	.....	.....	.....	.....
Kemper	s 5.05	3.36	.....	.....	.....	.....
Medora	5.15	3.47	.....	.....	.....	.....
Piasa	s 5.25	3.57	.....	.....	.....	.....
Brighton	5.40	4.12	.....	.....	.....	.....
Woods	s 5.52	s 4.24	.....	.....	.....	.....
Upper Alton	s 5.56	4.30	.....	.....	.....	.....
East Alton	6.08	4.42	.....	.....	.....	.....
East St. Louis, Ill.	6.57	5.17	.....	.....	.....	.....
Washington Ave., 2, 4, 10	7.04	5.24	.....	.....	.....	.....
St. Louis, Mo Ar	7.15	5.35	.....	.....	.....	.....

Via Main Line.

Reference Marks.

¶ Meals.
† Ex. Sun.
s Stop on signal to receive or discharge passengers.
a Waits for connection with Galesburg division train No. 8, see table 7, page 25.
m Stops to let off passengers from Galesburg or south.
n Stops on signal for passengers going north of Savanna.
o Stops to receive or discharge passengers.

Reference Marks.

† Except Sunday.
s Stop on signal.
a Connects with No. 190 at Vermont. d Stops on signal to leave passengers from Clinton or north, or to take on passengers going south of Rock Island.
e Stops to leave passengers or when flagged. g Stops on signal for passengers going south of Rock Island. h Stops to leave passengers from Moline or north.

The time from 12.01 midnight to 12.00 noon is shown by LIGHT faced figures, and the time from 12.01 noon to 12.00 midnight by HEAVY faced figures.

29 EXHIBIT B.

Before the Railroad Commission of Wisconsin.

JOHN F. SCHLOSSTEIN,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

The petitioner is a surveyor, and resides at Cochrane, Wisconsin. He alleges that the passenger service of the respondent railway company is inadequate for the village of Cochrane and vicinity; that at the present time the only trains stopping at Cochrane are as follows: North bound train No. 91, freight carrying passengers, daily except Sunday, arrives at 10:17 a. m.; train No. 53 running daily, arrives at 10:58 A. M.; south bound train No. 54 running daily arrives at 9:09 a. m.; train No. 92, freight carrying passengers, running daily except Sunday, arrives at 1:10 P. M.; that the village of Cochrane has 260 inhabitants and is surrounded by a population of about 3,000 people, which is tributary to the respondent's station at Cochrane. Wherefore petitioner prays that the respondent railway company be required to stop two passenger trains each way daily at Cochrane as provided in Chapter 483 of the Laws of 1911.

The matter came on for hearing on the 19th day of October, 1911. The petitioner appeared in person, and the respondent by Woodward & Lees, its attorneys.

The principal complaint of the petitioner is that it is impossible for residents of Cochrane and vicinity to go to any point, either north or south of the village, by train, and return on the same day, except that one may go to Alma and return on the same day, but as the time between trains at Alma is so short this privilege is of little value.

Cochrane is an incorporated village of about 260 inhabitants. It has four general stores, two saloons, two lumber yards and planing mills. The village of Buffalo, having a population of about 250, lies a short distance west of Cochrane. Alma, the county seat of Buffalo County, having a population of over 1,000, is situated 8.3 miles north of Cochrane. Fountain City, having a population of approximately 1,000, lies about 8 miles south of Buffalo. All of the limited trains on respondent's line stop at Alma. Two
30 passenger trains each way daily stop at Fountain City.

The respondent objects to stopping any more trains at Cochrane than are at present stopping there, for the reason that all of its other trains are heavy interstate trains, which are run in competition with trains upon other roads, and that if it was required to stop such trains at all stations having a population of 200, it would be impossible to continue them in service.

The respondent's road is located on the east bank of the Mississippi River and runs through a territory that is sparsely settled. About 90% of all the passenger traffic over this line consists of

people going from Chicago to St. Paul and points in Minnesota, the Dakotas and the entire northwest and Canada. Two trains are run each way daily between Chicago and Portland and Seattle. One train leaves Chicago in the morning and from St. Paul runs over the Northern Pacific line to the Northwest. Another train leaves Chicago in the evening, and from St. Paul goes over the Great Northern line to the Northwest. There are two corresponding trains eastbound. There is also a train each way daily between Chicago and Minneapolis, known as the Minnesota Limited, which serves the traffic to Minneapolis and St. Paul on the one hand and Chicago and St. Louis on the other. In addition to these interstate trains, there is a local train each way running between Savanna and Minneapolis, which takes care of the traffic in the state of Wisconsin.

The west bound train from Chicago to the Northwest by way of the Northern Pacific line from St. Paul is known as train No. 51, and is composed of Standard Pullman and tourist cars. The number of cars in the train is twelve. The corresponding east bound train is known as train No. 50 and contains the same number of cars. Similar trains routed over the Great Northern line from St. Paul to and from the Northwest are known as Trains 49 and 52 respectively. Trains No. 47 and 48 are each known as the Minnesota Limited and each is composed of one observation car, three standard sleeping cars, one St. Louis standard sleeping car, two Chicago coaches, one combined mail and baggage car, and two baggage cars. Train No. 58 consists of two sleeping
31 cars and from five to eight baggage and express cars. All of these interstate trains are heavy and run at a maximum speed of fifty miles per hour in order to make connection with trains for the east at Chicago and with trains for the west at St. Paul. As the distance between Chicago and St. Paul over respondent's line is 33 miles greater than that over the line of the Chicago & North Western Railway Company and 27 miles greater than that over the line of the Chicago, Milwaukee & St. Paul Railway Company, it becomes necessary for the respondent to operate its trains at a high rate of speed in order to meet the schedule time of its competitors' trains between such points, as well as to make the connections mentioned.

North bound trains Nos. 53 and 91 and southbound trains Nos. 54 and 92 stop at Cochrane. Nos. 91 and 92 are freight trains, but carry passengers. Nos. 53 and 54 are passenger trains.

The respondent offered in evidence a statement showing its earnings at a number of stations in this state situated somewhat similarly in respect to service as Cochrane. It is contended that if Cochrane is entitled to two trains daily each way, then each of the other stations would be entitled to the same service. It is very evident from the earnings at these stations that the railway company would not be justified in putting into service another local train.

The following table shows the earnings accruing in this State on ticket sales for the year ending June 13, 1911, at the stations which it is claimed are entitled to equal consideration with Cochrane in the matter of passenger service:

Stations.	Intra-state.		Inter-state.		Total.	
	Pass.	Revenue.	Pass.	Revenue.	Pass.	Revenue.
Bay City	1,511	$449.83	11,022	490.00	2,533	939.83
Maiden Rock	3,680	1,435.12	3,365	2,416.06	7,045	3,851.18
Stockholm	2,231	446.54	975	1,005.48	3,206	1,452.02
Pepin	3,044	931.12	1,157	1,071.63	4,201	2,002.75
Nelson	3,203	890.55	643	719.11	3,846	1,609.66
Cochrane	2,804	985.87	853	765.76	3,657	1,751.53
Trempealeau	1,624	781.02	1,044	1,188.94	2,668	1,969.96
Stoddard	4,022	1,199.44	154	252.30	4,176	1,451.74
Genoa	4,797	1,617.17	215	416.40	5,012	2,033.57
De Soto	4,422	2,030.12	364	666.18	4,786	2,696.30
Ferryville	3,254	1,734.10	264	624.98	3,518	2,359.08
Lynxville	3,527	1,693.68	358	624.39	3,885	2,318.07
32						
Bagley	2,748	993.34	312	500.30	3,060	1,493.64
Glen Haven	2,657	991.18	602	633.85	3,260	1,625.03
Total	43,525	16,179.08	11,328	11,375.38	54,853	27,554.46

The following table shows the freight tonnage and earnings at the same stations for the year ending June 30, 1911.

Stations.	Weight in pounds received.	Weight in pounds forwarded.	Earnings received.	Earnings forwarded.	Total weight in pounds.	Total earnings.
Bagley	2,167,302	2,097,342	3,742.67	3,287.53	4,264,644	7,030.20
Bay City	2,249,160	3,087,376	4,004.80	4,788.13	5,336,536	8,792.93
Cochrane	6,377,805	7,142,076	7,717.19	12,332.64	13,519,881	20,049.83
De Soto	5,429,704	3,111,743	5,150.02	3,578.03	8,541,447	10,908.05
Ferryville	2,055,124	1,820,064	3,402.52	2,728.51	3,875,188	6,221.03
Genoa	2,846,753	2,597,515	4,457.80	3,853.14	5,444,268	8,110.94
Glen Haven	4,654,850	4,515,015	12,705.02	9,217.10	9,169,135	21,922.12
Lynxville	3,204,799	2,060,039	5,645.67	4,462.08	5,364,838	10,107.75
Maiden Rock	6,963,843	12,863,959	10,265.87	16,933.52	19,827,802	27,199.39
Nelson	2,658,152	1,916,016	4,384.07	4,127.50	4,574,168	8,511.57
Pepin	5,280,175	7,004,400	7,464.19	11,299.20	12,284,575	18,763.39
Stockholm	2,318,530	5,369,868	3,796.24	7,618.49	7,688,398	11,414.73
Stoddard	2,501,952	835,079	3,480.48	1,142.70	3,337,031	4,623.18
Trempealeau	922,245	288,330	1,934.85	444.55	2,208,575	2,379.40

PAGE BOUND VERTICAL IN BOOK

Independent of any statutory provision on the subject we should feel contrained to hold that the existing passenger service afforded the village of Cochrane was adequate under the circumstances, and that therefore interstate trains could not be required to stop at that station. In other cases, where the facts were somewhat similar to those presented in the instant case, such conclusion seemed inevitable under the rulings of the courts. Tate vs. C., B. & Q. R. R. Co., 2 W. R. C. R. 348; Kemp vs. C., B. & Q. R. R. Co., 3 W. R. C. R. 350; Maiden Rock vs. C., B. & Q. R. R. Co., 4 W. R. C. R. 922; Dyer vs. C. M. & St. P. Ry. Co., 2 W. R. C. R. 621; Schmidt vs. G. N. Ry. Co., 4 W. R. C. R. 121; Missouri, Kansas & Texas Ry. Co. vs. Norfolk, 25 Okla. 325; St. Louis & S. F. Ry. vs. Reynolds, 26 Okla, 804.

Section 1801 was impliedly repealed by Chapter 362, Laws of 1905, which conferred upon the Commission the power to regulate the rates and services of railway companies within the state. However, the recent legislature, by Chapter 483 of the Laws of 1911, re-enacted Section 1801 with certain amendments. This reads:

33 "Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more through or within one eighth of a mile of which its line of road runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that exent; and if four or more passenger trains are run each way daily, at least two passenger trains each day each way, shall be stopped at each and every such station.

This statute deprives the Commission of any discretion in the matter. It fixes the quantum of passenger service for every station coming within the classification made.

Now therefore, it is ordered That the Chicago, Burlington & Quincy Railroad Company be and the same is hereby required to stop one passenger train each way daily at Cochrane, in addition to the passenger trains that now stop there.

Dated at Madison, Wisconsin, this 20th day of November 1911.

RAILROAD COMMISSION OF WISCONSIN,
By JOHN H. ROEMER,
HALFORD ERICKSON,
Commissioners.

34 [Endorsed:] State of Wisconsin. Circuit Court Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff, vs. Railroad Commission of Wisconsin, Defendant. Summons and Complaint. Copy.

35 (Endorsements:) State of Wisconsin. Circuit Court. Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff vs. Railroad Commission of Wisconsin, Defendant. Summons and Complaint. Service Admitted this 23rd day of December, 1911. Railroad Comm. of Wisconsin, J. M. Win-

terbotham, Secy. Filed Circuit Court Dane County Jan. 31, 1912. Nissen P. Stenjem Clerk. Filed, October 11, 1912, Clarence Kellogg, Clerk of Supreme Court, Wis.

36 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF WISCONSIN, Defendant.

The answer of the above named defendant to the complaint of the above named plaintiff in the above entitled action respectfully shows to the court:

I.

Defendant denies that the plaintiff now provides, or at any time since June 30, 1911, has provided adequate, reasonable or ample facilities for the transportation of passengers at Cochrane, or at many of the cities and villages located on said plaintiff's line of railroad in this state.

II.

Defendant denies that the daily through trains referred to in folios 12 and 13 of said complaint cannot stop at Cochrane or other small towns and denies that it would seriously or at all interfere with the passenger business of plaintiff to increase the number of stops now made by its limited trains and denies that by increasing such number of stops the interests of the traveling public would be injured.

III.

Defendant denies that in the event that all other states, traversed by the lines of railroads of plaintiff and its connecting lines
37 between Chicago and North Pacific points, make like requirements for the accommodation of the small towns within such states, it will be impossible for plaintiff and its connecting lines to operate through trains or to secure any portion of the through traffic, or that interstate traffic between the larger points on the railroad of plaintiff and its connecting lines which are not reached by other lines of railway will be hindered or delayed thereby. Defendant alleges that such requirements, if made, would affect all competing lines substantially alike.

IV.

Defendant denies that chapter 483, laws of 1911, and the order of said defendant referred to in said complaint are, or that either of them is, unconstitutional or void in any particular, and denies that the provisions of said law if carried into effect would require

the plaintiff to stop two of its limited through trains at thirteen or any additional stations, and denies that the requiring of such stops is or would be an interference with interstate commerce.

V.

Defendant alleges that said law and said order can be fully complied with by plaintiff's running one additional local train each way daily over its said railroad in Wisconsin and stopping the same at said village of Cochrane. Defendant alleges, upon information and belief, that the expense of so doing would be relatively small and would relieve plaintiff's through trains of much local traffic and enable the same to more efficiently serve the through traffic, and that the cost of operating said through trains would be thereby considerably decreased and the local passenger traffic con-
38 siderably increased so that the net cost of such additional trains would be little, if anything.

VI.

Defendant alleges that said village of Cochrane has a postoffice, and that plaintiff's line of railroad runs through said village and that it is the only line of railroad which runs through or near said village or which does or can afford any transportation facilities to passengers desiring to go to or from said village; that said village is joined on the west by the city of Buffalo, having a population of about 325, the main portions of the cities being about one mile apart, and that there are about 3,000 residents in the country east of Cochrane within a radius of a few miles, for whom Cochrane is the nearest railway station.

VII.

Defendant alleges that the Chicago, Burlington & Northern Railroad Company mentioned in said plaintiff's complaint is and ever since the year 1885 has been a railroad corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin; that plaintiff purchased the railroad and property of said Chicago, Burlington & Northern Railroad Company and received a deed therefor from said last named company which deed is dated June 1, 1899 and was recorded in the office of the secretary of state of the State of Wisconsin on July 25, 1899, in volume 12 of railroad mortgages and trust deeds on page 227; that in and by the terms of said deed said plaintiff covenanted and agreed to equip said railroad or cause the same to be equipped and to maintain and operate the same in such manner as to furnish reasonable accommodations to the public and further covenanted and agreed to, and did in and by the terms of said deed, assume all contracts, lands and
39 other obligations of whatsoever kind of said Chicago, Burlington & Northern Railroad Company.

VIII.

Defendant alleges that in addition to the lines of railroad mentioned in said complaint, running between Chicago and Minneapolis,

the Minneapolis, St. Paul and Sault Ste. Marie Railway Company maintains a line of railroad between said cities and runs passenger trains thereon in competition with the trains on the said lines of railroad mentioned in said complaint; that the length of said line of said Minneapolis, St. Paul and Sault Ste. Marie Railway Company is 475 miles; that the through trains on said plaintiff's railroad make fewer stops between Chicago and Minneapolis than the trains on any other railroad between said cities.

IX.

Defendant denies that the line of the Chicago and Northwestern Railway Company between said cities of Chicago and Minneapolis is 412 miles in length, and alleges that the length of said line is 422 miles.

Wherefore the defendant prays judgment that said plaintiff's complaint be dismissed with costs.

L. H. BANCROFT,
Attorney General;
RUSSELL JACKSON,
Deputy Attorney General;
BYRON H. STEBBINS,
Assistant Attorney General,
Attorneys for Defendant.

40 (Endorsements:) Original. State of Wisconsin. Circuit Court. Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff, vs. Railroad Commission of Wisconsin, Defendant. Answer. Due and personal service of the within answer this 2nd day of May, 1912. Woodward & Lees, Attorneys for Plaintiff. Filed Circuit Court, Dane County, Jun- 4, 1912. Nissen P. Stenjem, Clerk. Filed, October 11, 1912, Clarence Kellogg, Clerk of Supreme Court, Wis.

41 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff,
vs.
RAILROAD COMMISSION OF WISCONSIN, Defendant.

Findings of Fact and Conclusions of Law.

The above entitled action coming on to be heard upon the record transmitted by the railroad commission, and the plaintiff appearing by Woodward & Lees its attorneys, and the defendant appearing by Russell H. Jackson, deputy attorney general, and Byron H. Stebbins, assistant attorney general, and the court having listened to the argument of counsel and taken the matter under advisement makes and files the following:

Findings of Fact.

1. That on November 20, 1911, the defendant railroad commission made an order requiring the plaintiff railway company to stop one passenger train each way daily at Cochrane, Wisconsin, in addition to the passenger trains that then stopped at that village.

2. That Cochrane is an incorporated village with about 260 inhabitants and with about 3,000 people tributary to the station of the plaintiff at Cochrane; that during the year ending June 30, 1911, the business done by the plaintiff at Cochrane amounted to $21,801.46.

3. That prior to the making of such order only two passenger trains stopped at Cochrane each day, one going south at about 9 A. M. and one going north at about 10 A. M.; that there
42 was also one freight train each way that carried passengers; that there were three daily passenger trains one way and four the other, which ran through Cochrane without stopping; that such trains ran from Chicago to St. Paul and points beyond in the west, and were used largely for interstate business.

4. That the passenger service afforded Cochrane when the order in question was made was not adequate or reasonable; that the said order was a reasonable exercise of the powers vested in the defendant commission.

Conclusions of Law.

1. That the said order of the railroad commission dated November 20, 1911, is neither unreasonable nor unlawful; that it is not an unwarranted interference with or obstruction of interstate commerce; that it is not confiscatory, and does not take plaintiff's property without due process of law.

2. That judgment be entered dismissing plaintiff's complaint, with costs and disbursements to be taxed according to law.

Let judgment be entered accordingly.

Dated June 28, 1912.

By the Court:

E. RAY STEVENS, *Judge.*

Either party may within ten days from the date of these findings file with the court and serve upon opposing counsel requests for additional or suggestions as to the form of the above findings.

43

Memorandum of Decision.

The burden is on the plaintiff to show by clear and satisfactory evidence that the order here in question is unlawful or unreasonable. Under familiar rules often applied in the consideration of cases in appellate courts, if the plaintiff has failed to show that the order is either unlawful or is unreasonable it must stand, without regard to the reasons assigned by the commission for making the order.

It cannot be said that it is unreasonable to provide that a village with 3,000 people tributary to its railway station, at which over $21,000 of business is transacted by the plaintiff annually, should have two daily passenger trains each way. When the order was entered there was one daily passenger each way, whose schedules were so arranged that they passed through the village but little more than an hour apart during the early part of the forenoon. This service was supplemented by the very uncertain service rendered by one freight train each way, whose time of departure was necessarily very uncertain and irregular. The passenger service rendered by freight trains is not a compliance with the inherent obligation to afford service for the carrying of passengers. Missouri R. Co. v. Kansas, 216 U. S. 262, 279-80; 54 L. Ed. 472, 480. The service afforded by only one daily passenger train each way was held inadequate in the following cases:

Missouri R. Co. v. Witcher, 106 Pac. 852, 3;
St. Louis Ry. v. Troy, 108 Pac. 753;
State v. Railway Commission, 110 Pac. 1075, Lo 82;
Atchison Ry. v. State, 114 Pac. 721.

The plaintiff further contends that the order should be set aside as an unwarranted interference with and obstruction of interstate commerce. It does not necessarily follow that the order is an unwarranted interference with or obstruction of interstate commerce because it may lead to the stopping of interstate trains.

44 "Railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who have not only granted to them their franchise, but who may have contributed largely to the construction of the road."

Cleveland R. Co. v. Illinois, 177 U. S. 514, 521-2; 44 L. Ed. 868, 871.

Recognizing the fundamental duty of the carrier just stated, the federal supreme court has uniformly held that a state statute or an order of a state commission requiring the stopping of an interstate train is not void as an unwarranted interference with interstate commerce, in those cases in which such service is necessary in order to furnish adequate and reasonable accommodation.

Lake Shore R. Co. v. Ohio, 173 U. S. 285, 301; 43 L. Ed. 702, 708.

See also

Mississippi R. Commission v. Illinois R. Co. 202 U. S. 335, 344; 51 L. Ed. 209, 215.

It is only when the railway company has supplied ample facilities for the adequate accommodation of the traveling public at any given point that it can be said that an order or a statute requiring the

stopping of interstate trains is an unlawful regulation or burden upon interstate commerce.

Herndon v. Chicago R. Co. 218 U. S. 135, 157; 54 L. Ed. 970, 977;
Cleveland R. Co. v. Illinois, 177 U. S. 514, 521; 44 L. Ed. 868, 871;
Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 334; 52 L. Ed. 230, 234.

So that assuming that the order here in question necessitates the stopping of an interstate train, the question presented is whether the plaintiff furnished proper and adequate accommodations for the travelling public at Cochrane when the order was made. The plaintiff urges that the finding of the railroad commission that the service "was adequate under the circumstances" settled that question so far as this case is concerned, and that the court must follow that finding and find that the service was adequate, and that
45 therefore this order was an unwarranted interference with interstate commerce. In taking this position the plaintiff mistakes the effect of subd. *c* of sec. 1797-16 of the statutes, in that it attempts to apply the rule there stated to a finding of the commission, when in fact it applies only to the order itself. The order cannot be held unreasonable because of the reasons which led the commission to make the order, unless the plaintiff has met the burden of showing that the order was in fact unreasonable and unlawful.

But the question of unwarranted interference with interstate commerce is not necessarily in the case. The court will not give the order such a construction as will bring it into conflict with the power of congress to regulate interstate commerce, when there is nothing in the order which compels the plaintiff to stop any of its interstate trains at Cochrane.

The plaintiff can fully comply with the order by placing another local train in service, without stopping any of its present interstate trains. The fact that this train may be operated at a loss, while an important criterion, is not in any way decisive of the question under consideration. The primal duty of furnishing adequate service may be compelled, although by so doing some pecuniary loss to the carrier may result. Missouri R. Co. v. Kansas, 216 U. S. 262, 278; 54 L. Ed. 472, 479. The order was not confiscatory and did not take the property of the plaintiff without due process of law, under the facts established by the record in this case. Atlantic R. Co. v. North Carolina Com., 206 U. S. 1, 23; 51 L. Ed. 933, 944.

46 (Endorsements:) State of Wisconsin. Circuit Court. Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff vs. Railroad Commission of Wisconsin. Defendant. Findings of Fact and Conclusions of Law. Filed and Entered Jug. & Rec. Book 32, Page 303, Jun. 28, 1912. Nissen P. Stenjem, Clerk. Filed, October 11, 1912, Clarence Kellogg, Clerk of Supreme Court, Wis.

47 STATE OF WISCONSIN:

Circuit Court for Dane County.

Chicago, Burlington & Quincy Railroad Co., Plaintiff,
vs.
Railroad Commission of Wisconsin, Defendant.

At a General Term of the Above-named Court Held at the Court-house in the City of Madison, Wisconsin, on the 20th day of July, 1912.

Present, Hon. E. Ray Stevens, circuit judge, presiding.

The above entitled action having been tried before the court without a jury and the court having made and filed findings of fact and conclusions of law wherein judgment is ordered as herein adjudged,

Now, on motion of L. H. Bancroft, Attorney General of Wisconsin, Russell Jackson, Deputy Attorney General, and Byron H. Stebbins, First Assistant Attorney General, attorneys for defendant;

It is adjudged, that the complaint of the above named plaintiff be and the same is hereby dismissed and that said defendant do have and recover of and from said plaintiff the sum of Thirty-nine & 58/100 dollars, its costs and disbursements.

Dated July 20, 1912.

By the Court:

NISSEN P. STENJEM, *Clerk.*
By MARY GRANE, *Deputy.*

48 (Endorsements:) State of Wisconsin. Circuit Court. Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff vs. Railroad Commission of Wisconsin, Defendant. Judgment. Filed and Entered. Judg. & Rec. Book 32, page 305. Jul. 20, 1912. Nissen P. Stenjem, Clerk. Judgment Docket M. Page 15. Filed, October 11, 1912, Clarence Kellogg, Clerk of Supreme Court, Wis.

49 STATE OF WISCONSIN:

In Circuit Court for Dane County.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, A Corporation, Plaintiff,
vs.
THE RAILROAD COMMISSION OF WISCONSIN, Defendant.

Bill of Exceptions.

Be it remembered, That this action, being at issue and on the calendar, was brought to trial at the regular June, 1912 term of said

court, to-wit, on the 4th day of June, 1912, before the Hon. E. Ray Stevens, Circuit Judge Presiding, without a Jury.

Woodward & Lees appearing for the Plaintiff;

Russell Jackson, Deputy Attorney General, and

Byron H. Stebbins, Assistant Attorney General, appearing for the Defendant.

The case being called for trial, the following testimony was taken and proceedings had on said trial as follows:

Plaintiff offered in evidence the complete record returned by the railroad commission of Wisconsin in the case of John F. Schlosstein vs. Chicago, Burlington & Quincy Railroad Company.

50 *Complaint Against Carrier.*

Railroad Commission of Wisconsin.

JOHN F. SCHLOSSTEIN
against
THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

The petition of the above named John F. Schlosstein respectfully shows:

1. (State occupation and place of business.)
County Surveyer residing at Cochrane, Wis.

2. That the above named Railway Company is a common carrier, engaged in the transportation of persons and property by railroad between points in the State of Wisconsin, and that as such common carrier said Railway Company is subject to the provisions of Chapter 87, of the Wisconsin Statutes of 1898, and acts amendatory thereto, and is likewise subject to the provisions of Chapter 362, of the laws of Wisconsin for the year 1905, and acts amendatory thereto.

3. That (here state concisely the matters intended to be complained of, numbering each succeeding paragraph), the passenger accommodation is inadequate for Cochrane and vicinity. The present time table is as follows: North-bound trains, passenger—10:17 a. m., accom-odation freight—10:58 a. m., south-bound trains, passenger—9:09 a. m., accom-odation freight—1:10 p. m. There are, if we only go as far north as Alma, hardly two hours between trains, if they are on time, and the depot is about one-half mile from the business center of the city. If the north-bound train is late then
51 there may be ample time to change trains and go back again, but cheaper not to start out at all. Going south there is no opportunity at all to come back the same day.

4. Cochrane has 260 inhabitants and does more railroad business than any other station between La Crosse and Prescott except Alma.

5. Cochrane is joined in the west by Buffalo City with 325 inhabitants; on the north, south and east by the town of Belvidere.

6. Three miles east begins the large and fertile Waumandee Valley with two big stores and hotels, a big flour mill and a large creamery. This valley does all its railroad business at Cochrane.

7. North-east and south-east from here are the towns of Lincoln and Milton, who do a great deal of railroad business at Cochrane.

8. North of Waumandee, the town of Montana has its principal market at Cochrane, also many of the farmers of the town of Glenco, which lies east of Waumandee.

9. There are about 3000 inhabitants to whom Cochrane is the nearest and handiest station; many of them would leave their teams here to let them rest and take the train north or south, if they could get back the same day. These people are, as ourselves, nothing less than pleased that the conditions are thus, and desire that Chap. 483, Laws of 1911 be enforced, that two passenger trains be stopped each way daily at Cochrane.

Wherefore, petitioner prays that the aforesaid Railway Company be required to answer the charges herein and that after due hearing and investigation an order be made commanding said railway company to cease and desist from said violations of the acts re-
52 ferred to in said petition, and for such other and further order as the Commission may deem necessary and just in the premises. (Prayer may be varied so as to ask for the entertainment of lawful rates or practices, and an order requiring the carrier to conform thereto. If reparation for any wrong or injury be desired the petitioner should state the nature and extent of the reparation he deems proper.)

Dated Cochrane, Wis., this 24th day of August, A. D. 1911.

JOHN F. SCHLOSSTEIN,
Petitioner.

53 Thereupon on due notice a hearing was had before said railroad commission; upon said hearing the following testimony was taken and proceedings had to-wit:

"JOHN F. SCHLOSSTEIN, being first duly sworn, testified:

Com. HARLOWE:

Mr. Schlosstein, you state your case now; give the Commission all the information you have on the subject.

A. Well, I have given some in the complaint, that we have no accom-odations there going north or south from Cochrane. The northbound train leaves Cochrane at 10:19 and southbound 9:09, so we can go neither north or south and come back the same day; might go to Alma, which is our county seat, and come back on the way freight if the passenger is on time, but there is only a little time left because that is due starting out at 12:30.

Q. Is Cochrane a village?

A. Cochrane is an incorporated village of about 260 inhabitants; it had 253 when it was incorporated and we have got a few more now, and Buffalo City lying right west adjoining it has about 350, I think, between 300 and 350 inhabitants; I didn't see the last census. And we have a great country east of it and northeast and southeast. I think there are about 3000 inhabitants tributary to the Village of Cochrane. We do more railroad business than any station between

La Crosse and Prescott except Alma. We don't do as much passenger business because we have got no accom-odation whatever. If anybody wants to go to Alma of course they go to Alma with a team and back again. If they want to go to La Crosse or Winona they take the team to Fountain City. They take in summer the boat to Winona and then go home with the team again.

Mr. LEES:

54 Q. How many miles is it from Cochrane to Alama?
A. It is 8.3; used to pay 25 cents at the three cent rate.
Q. It is about the same distance to Fountain City, is it not?
A. A little more.
Q. Now you are speaking of the country tributary to Cochrane to the east. The farmers, a great many of them, go to Alma and Fountain City, do they not?
A. No, they don't go to Fountain City hardly any more at all.
Q. Fountain City is a place of over 1,000 people?
A. Yes.
Q. And Alma is a place of over 1,000 people?
A. In the neighborhood of 1,000.
Q. The last census shows it to be more than 1000, both Alma and Fountain City. That is correct, is it not?
A. Yes, about 1000.
Q. And Alma is the county seat?
A. Yes sir.
Q. All the Burlington limited trains stop at Alma?
A. They all stop at Alma.
Q. And they have two passenger trains each way daily stop at Fountain City?
A. Yes, 51 and 58.
Q. Now the service at Cochrane consists of the way freight each way and the local passenger trains each way as stated in your petition?
A. Yes sir.
Q. You say that Cochrane does more business than any other station along the line of the road between Prescott and La Crosse except Alma. You mean the freight business is larger there?
A. Yes; you can't do any passenger business because we have no accomodation.
Q. But your freight business is larger, is it, than Fountain
55 City's freight business?
A. Yes.
Q. Or Bay City or Maiden Rock or any of those places, is it?
A. Yes. I suppose you know it.
Q. We can introduce figures here anyway.
A. Well now there may be an exception. This summer, if you take the figures of this summer when that big store—ever since that big store burned down, but that store is running again.
Com. HARLOWE: What store do you have reference to?
A. Rohrer Brothers big department store burned down.
Q. At Cochrane?

A. Yes. Of course the freight business was a little short then but they have built up and started in again.

Mr. LEES: The store is running again, it is?

A. Yes sir.

Q. The passenger business at Cochrane is the same substantially as it has been for the last ten years, it is?

A. I don't know how that is; I know a good many complain.

Q. I am asking you if the passenger service is substantially the same as it was for the past ten years.

A. I don't know.

Q. You don't live at Cochrane, do you?

A. Yes.

Q. I thought your residence was at Buffalo City.

A. It used to be before Cochrane was built.

Com. HARLOWE:

Q. How long have you lived at Cochrane?

A. I lived at Cochrane since 1900 regularly; lived there before sometime; I was raised right there in the neighborhood of Cochrane.

56 Mr. LEES:

Q. Buffalo City is an incorporated city of about 325 inhabitants, isn't it?

A. May be so.

Q. That is located on the river about a mile west of Cochrane?

A. Adjoining it.

Q. The main parts of the cities are about a mile apart?

A. Yes.

Q. Has Buffalo City got any industries?

A. No, not any more than a saloon now.

Q. That is the only thing they have is a saloon?

A. Yes and a little store.

Q. One or two little stores?

A. Just one.

Q. It is a kind of place where people retire when they get off of farms?

A. Yes.

Q. Kind of a quiet nook?

A. Yes.

Q. At Cochrane you have a creamery I believe?

A. Yes.

Q. And how many stores?

A We have got four good sized stores and going to have another one soon.

Q. How many saloons have you?

A Only two, that is all we are allowed.

Q. And one hotel?

A. Two.

Q. Have you any other industries at Cochrane?

A. Well, some planing mills, lumber yards.

Q. That is the lumber yard that belongs to the Laue Lum-
57 ber Co. at Alma?
A. Yes and one of Kochenderfer.

Mr. EUSTIS:

Q. I would like to ask how big a place is Pepin?
A. I don't know.
Q. Is it any larger?
Q. Three or 500 I guess.
Q. It is a little larger?
A. I guess it is a little larger.
Q. Maiden Rock — how much larger?
A. It is not much larger either, but none of them has got as big country as Cochrane has.
Q. None of them have?
A. No sir. You know that, Lees.
Q. How do you account for the fact that at Maiden Rock there are practically two and one-half times as many tickets sold as at Cochrane?
A. Because they have got accommodation, we haven't got it.
Q. They have the same train service exactly as you have except one train in one direction more.
A. No, they have two, haven't they; they have 51 and 58.
Q. No, only one.
A. I know 58 stopped when I went down from St. Paul.
Q. 58 stops; I say that is the addition.
A. Doesn't 51 stop?
Q. No.
A. Stops at Fountain City.
Q. 51 stops at Fountain City but doesn't stop at Maiden Rock.
A. That may be; the business is north you know to St. Paul.
Mr. LEES: I think we can show that in our part of the case.
58 Mr. EUSTIS: I wanted to know if the witness had any special reason for it; if he could explain it in any way. I don't understand why Maiden Rock, for instance, should sell nearly $6000 worth of tickets with only one train added in one direction.

A. Well we can't go anywheres and come back the same day, neither north nor south. When the farmers come in they go directly to Fountain City or to Alma, otherwise they would have to leave the teams at Cochrane and take the train. A good many go to Winona and do business there; in the summer time they drive to Fountain City and take the ferry and go down to Fountain City or to Winona and back on the ferry.
Q. Supposing there would be one passenger train a day in each direction pass your station, would you suggest that it be run on any different schedule than what it is run now?
A. We would prefer that 51 and 58 would stop; that would be very handy.
Q. But suppose they don't; suppose there is only one passenger

train in each direction each day, a local train, would you suggest that it be run in a different manner than it is run now?

A. No.

Mr. LEES: If you could not change trains 53 and 54 so as to suit you any better than now, for those are the only trains you have now.

A. Is that what you have now?

Q. Yes, that is what you have now.

A. No.

Com. HARLOWE: Is there anything more you wish to say, Mr. Schlosstein?

A. I don't know. That is all I can say, if we had better accommodation we would have more passengers, as I said before; we can't go neither north or south and come back the same day,
59 and the farmers don't want to lose a day. I have been surveying in the neighborhood of Winona many times and then I have got to go to Fountain City and stay there all night. Some have been talking if only 51 would stop so we would go—or 59 would stop—or 58 would stop—then we could go to Alma from Fountain City; go anywhere south and get back on 58 at nine o'clock, that would be better than nothing at all, but the way we are fixed now it is terrible.

P. S. EUSTIS, being first duly sworn, testified:

Mr. LEES:

Q. Mr. Eustis, where do you reside?

A. I reside in Chicago.

Q. And what is your occupation?

A. Passenger Traffic Manager of the C. B. & Q. Railroad.

Q How long have you been in charge of the passenger traffic of the C. B. & Q. Railroad?

A. In my present position since 1902, in charge of traffic for the whole system, and since 1888 in charge of the traffic of the lines east of the Missouri River.

Q. How long have you been in the passenger traffic business with the C. B. & Q.?

A. Thirty-five years.

Q. You are familiar with the train service on what is known as the LaCrosse Division of the C. B. & Q.?

A. Yes, sir.

Q. I wish you would describe that Branch of the road and the character of its business and the accommodations you furnish.

A. The road is located on the east bank of the Mississippi River where there is in the nature of things very little local traffic. The great bulk of the passenger traffic to be had there is traffic
60 from south and east and north and northwest, generally speaking, Chicago and St. Louis to St. Paul, Minneapolis and beyond. It is a well traveled route for traffic to Minnesota, the Dakotas, the entire northwest and to and from Canada. We run each way daily two trains to the far Northwest, between Chicago and

the far Northwest, Portland and Seattle; one train leaving in the morning goes via the Northern Pacific, the other train leaving Chicago in the evening goes by the Great Northern, and we have similar trains east bound. Then we run the Minnesota Limited in each direction, serving the traffic between Minneapolis and St. Paul on the one hand and Chicago and St. Louis on the other. In addition to that we run a local train to take care of the traffic which is entirely local to the road in Wisconsin; we run that between Savanna and Minneapolis; it takes two trains, one each way.

Q. Numbers 53 and 54?

A. Trains Nos. 53 and 54. These local trains serve all the small communities at which it has been found impossible to stop the thru interstate trains.

Q. Have you a statement here of the comparative ticket sales of various stations in the state of Wisconsin at which we have less than two passenger trains per day each way making stops, for the fiscal year ending June 30, 1911?

A. Yes. Here is a statement showing the earnings accruing in the State of Wisconsin——

Com. HARLOWE: Did you make out that statement?

A. No, it is furnished by the auditor. I will have it certified by the Auditor if it is preferred.

Mr. LEES: You could have the Auditor sworn on that if there is any question about the accuracy of these figures?

61 Q. Are these true to the best of your knowledge, information and belief?

A. Yes, sir.

Q. That is marked Exhibit A here, is it?

A. Exhibit A shows the earnings of the Burlington Road in the State of Wisconsin on business originating at a list of twelve stations, the number of passengers, the revenue accruing to the Burlington Road on both interstate and interstate traffic.

Com. HARLOWE: Why is that list limited?

Mr. LEES: I am going to ask the question.

Q. That is a list of stations in the State of Wisconsin containing more than 200 inhabitants at which points the Burlington does not stop two passenger trains per day each way at the present time?

A. That is it. At every one of these places practically the same question arises as is presented by the complaint in the case.

Com. HARLOWE: But the complaint has stated that there are some places where these trains do stop.

A. They are not in this list.

(Tabulation marked Respondent's Exhibit A offered in evidence.)

Mr. LEES: We can furnish an additional list, but this is what it would mean in the way of additional stops that would be made necessary if the Commission considered that it was necessary to make these additional stops at Cochrane.

Com. HARLOWE: The commission would like to know what the revenue is at those stations where you do not make the stops.

Mr. LEES: We have that, we will introduce that.

62 A. This Exhibit B shows the gross receipts from ticket sales at stations in Wisconsin, separated to show local tickets, through coupon tickets, the total for the year ending June 30, 1911, compared with the total for the previous fiscal year.

(Tabulation marked Respondent's Exhibit B offered in evidence.)

Q. I wish you would describe the equipment of these limited interstate passenger trains which we are requested to stop. Give the description of all our limited trains.

A. The Chicago-Seattle-Portland train over the Northern Pacific, known as train 51 west-bound and train 50 east-bound, consists of standard Pullman for Portland and Seattle, tourist Pullmans for Portland and Seattle.

Q. How many of each?

A. One each kind, that is four in all, one standard and one tourist for Portland and one standard and one tourist for Seattle—an observation car to Minneapolis, dining car, three coaches, combination mail and baggage and an additional baggage if necessary; usually 12 cars.

Q. That is the equipment of 51 and 50?

A. Yes.

Q. What is the equipment of 49 and 52?

A. Substantially the same.

Q. Twelve car trains?

A. We have usually one car more.

Q. What is the equipment of 47 and 48?

A. They run between Chicago and Minneapolis only. Observation car, three standard sleepers, a St. Louis standard sleeper, also a St. Louis coach and a Chicago coach, generally an additional Chicago coach, combination mail and baggage and usually
63 one additional mail and baggage.

Q. And a compartment car?

A. I call that a sleeper.

Q. That makes about a 12 car train?

A. Eleven.

Q. What is the equipment of train 58?

A. 58 consists of one standard sleeper and two coaches and a dining car part way and anywhere from five to eight express cars.

Q. You have an observation on 58 too?

A. That is an observation sleeper. I should have said two sleepers and anywhere from five to eight baggage and express cars.

Q. In a general way what can you say as to our limited interstate trains, none of which stop at Cochrane, with reference to whether they are heavy or light trains?

A. Oh they are very heavy trains, considering the schedule that must be made; we are running between Chicago and St. Paul with each of these trains in twelve hours and a half, except No. 58 which is—yes, that is twelve hours and a half too; they are all twelve hours and a half. Our distance being longer than the other roads be-

tween Chicago and St. Paul requires us to run faster an- to make the same time between the two cities; and the trains are very heavy.

Q. How much longer is the Burlington track from Minneapolis to Chicago than the North Western line?

A. I haven't the exact figures; they have been changing, the other roads.

COM. HARLOWE: What is your distance, Mr. Eustis?

A. Ours is 431 between Chicago and St. Paul, and I believe that is 33 miles longer than the North Western and 27 miles longer than the Milwaukee.

Mr. LEES:

Q. How does it compare with the Great Western?

64 A. I haven't figured that.

Q. The Great Western runs limited trains between the Twin Cities and Chicago.

A. Yes.

Q. And the Great Western does not run within the State of Wisconsin?

A. No.

Q. Does the Wisconsin Central run limited trains between the Twin Cities and Chicago.

A. Yes.

Q. Do you know how their line is as compared to yours?

A. Their line at the present tine is considerably longer than ours is.

Q. In running these trains to the Pacific coast you are running these trains in competition with the new coast extension of the Chicago, Milwaukee & St. Paul Ry. Co.?

A. We are running them in competition with the Chicago, Milwaukee & St. Paul and its extension, the Chicago, Milwaukee & Puget Sound, and in competition with the North Western—Union Pacific Line, called the Harriman Line, to Portland and Seattle. All four roads make practically the same time between Chicago and Portland and Seattle, 72 hours.

Q. Can you say whether or not it is essential that you keep your schedule up to its present speed for the purpose of getting business to make it possible to operate your trains?

A. Yes, it is essential, and that is obvious when it is seen that all four roads make exactly 72 hours; if one changed to 71 hours the other three would change immediately.

COM. HARLOWE: I suppose only the sleepers go through to the coast, do they?

A. Yes; no, I am wrong, not all the sleepers go through on each train.

Q. But I mean those you mentioned going to Seattle and Portland.

A. In addition the coaches go through, and in some cases

65 the express cars go through. On the Northern Pacific train all the coaches go through except one. We always have one

extra in between Chicago and St. Paul; if there are three coaches two go through.

Q. Then you have a through train from Chicago to the Coast?

A. Yes sir.

Mr. LEES:

Q. Can you say whether or not the passenger service furnished at the Village of Cochrane is substantially the same as the passenger service furnished at the other stations listed on Exhibit A?

A. Yes, I think it is exactly the same as this list of stations, except at Maiden Rock and at Glen Haven; they have an additional train east-bound, No. 58.

Q. If these two additional limited trains were stopped at Cochrane is there any reason why it wouldn't be necessary to stop two additional trains at all the other stations shown on this list, Exhibit A?

A. Well, I can't see any reason why Cochrane should be entitled to have the additional service of two trains that wouldn't apply with like force to each one of these stations.

Q. There are a great many of these stations on that list, Exhibit A, that contain a larger population than the Village of Cochrane? Are there not?

A. Oh yes, several of them.

Q. Now if you made say as many as ten additional stops in the State of Wisconsin with any of these limited trains, could you make your present schedule time?

A. Could not possibly. I might say in that connection that due to various complaints, some of which have been before this Commission formally, we have from time to time, as the Commission knows, made an effort to stop one train here and stop another there and help out a little, so we have got each one of these limited trains, 47, 49 and 51 westbound, 52, 58, 48 and 50 east-
66 bound, all tagged with just the limit of stops. It works fairly well as it is now when the weather is good, but they already have got so many of these stops that when the weather is bad that they can't make the time.

Q. At what speed have you got to make your trains now to make their schedule time, these limited trains?

Q. We have to use the maximum speed limit set on the track which all the way between Chicago and St. Paul, except about 40 miles, is set at 50 miles an hour.

Q. You have to make use of the maximum speed limit for the purpose of getting them——

A. Yes, it is so difficult to make the time with a limit of 50 mile speed that we are discussing from time to time the wisdom and feasibility of raising that limit 55 miles.

Q. That of course would increase the hazard of running the trains to some extent?

A. Yes, of course. The head of the operating department has been unwilling at my instance so far to raise that limit, especially up where they have been doing work; he fears it would be dangerous.

Q. Are you able to give the figures showing the earnings per train mile on these various trains on the La Crosse Division within the State of Wisconsin?

A. The earnings are kept between Chicago and St. Paul for the whole road, except for the local trains 53 and 54, they are kept between Savanna and St. Paul.

Q. What are the earnings of the local trains, 53 and 54?

A. I haven't got them here, but they are about 34 cents a mile. Should I file a statement of these earnings?

Com. HARLOWE: If we need them we will send for them.

Mr. LEES:

67 Q. What are the earnings of trains 47 and 48, approximately?

A. About $2 a mile.

Q. How about the earnings of 50 and 51?

A. 51 about $1.75 and 50 about $1.50.

Q. And what are the earnings of 52 and 49?

A. 49 about $1.50 and 52 about $1.30.

Q. And what are the earnings of 58?

A. About 80 cents.

Q. What is train 58?

A. I described the equipment; it is a train that starts at Minneapolis and runs to Chicago only.

Q. Does it make any connections with outside trains at either end?

A. It is run for the purpose of making valuable connections at Chicago with early morning trains east.

Q. All these limited trains, their earnings are kept up largely by transcontinental traffic, are they not?

A. Yes, long haul traffic.

Q. Passengers coming from the Atlantic Coast and going to the Pacific Coast, a great many of them?

A. I wouldn't say that; at Chicago the load is gathered on there, the whole United States, comes from everywhere, and the bulk of it goes to points beyond St. Paul, some up in Minnesota, some to Canada, some to Montana and some to the Pacific coast.

Q. In a general way what can you say of the intra-state traffic in the State of Wisconsin as compared with the value of the inter-state traffic? What per centage of it?

A. Well, for instance, at this list of stations shown in Exhibit A——

Q. I don't mean that. I mean the earnings of these various trains. I mean the per centage.

A. Oh, the per centage is 90 per cent. at least.

Q. Ninety per cent. is interstate traffic?

68 A. Interstate traffic, yes.

Q. The local traffic amounts to less than 10 per cent., doesn't it?

A. Yes.

Q. On all the trains?

A. Yes sir.

Q. These trains, 53 and 54, you say earn about 34 cents a mile?
A. That is my recollection.
Q. Is that sufficient to pay the expense of running them?
A. No sir, nowhere near.
Q. What is the expense of running these trains per mile, about?
A. Oh I couldn't tell you.
Q. Fifty cents a mile?
A. Yes, more than that. It depends entirely upon what you speak of as expense, because they use the roadway—the expense of maintainance of road is to be part of the expense why it is over $1.
Q. Well, of course, the percentage would be less because the equipment of 53 and 54 is smaller—smaller train?
A. Yes, you must get at the average in some way.
Q. But in a general way these two trains don't pay?
A. Oh no, nowhere near.
Q. They are hardly ever filled with passengers?
A. Very seldom.
Q. The coaches are rarely filled?
A. Something will happen sometime at some place where a crowd will go back, say from Fountain City to Cochrane or from Alma to Cochrane, or something of that kind,—fill up and then they will be empty.
Q. These two trains are ample to carry all the passengers that travel locally on the Burlington Road in the State of Wisconsin?
A. And a great deal more. I will say this, I remember making some figures, and I think I testified before this Commission once before, that if the entire local intra-state traffic on our road
69 in Wisconsin were carried on this train the earnings wouldn't be enough to pay the cost of the average passenger train, wouldn't be as much as $1 per mile.
Q. In your opinion then, you think the company furnishes adequate facilities for handling its local traffic?
A. We do.
Q. Could it be possible to make stops of two passenger trains daily in each direction at all stations in the State of Wisconsin containing over 200 inhabitants and operate your present passenger schedule?
A. It would simply require an additional local train to do that.
Q. Either require an additional train or else require the entire taking off of one of your limited trains, wouldn't it?
A. That would amount to the same thing. If we didn't run 58 and 51, for instance, because we could not run them if we made these stops with them, the usefulness as through interstate trains would be ruined; we would have to stop them; then you would call them something else.
Q. Your experience is such that you could not get the through business on those trains and make them handle the local stops that would be necessary if they stopped at all stations containing over 200 inhabitants in the State of Wisconsin?
A. People wouldn't ride on them, the interstate long haul traveler

wouldn't ride on them; it would take longer on our road than by several roads.

Q. It would mean a delay of at least half or three quarters of an hour to make these additional stops in the State of Wisconsin?

A. I think it would make more than that; I think it would mean more than an hour.

Q. Figuring five minutes at each place it would take 70 minutes, wouldn't it?

A. The difficulty with that is, whereas now after making this stop at Alma, for instance, and attending to the work, then we get under way; it takes some time to get under way, and
70 then we get up to the maximum speed as quickly as possible and keep that up for a long distance, whereas if we were making all these stops so close together we would hardly ever get up to maximum speed at any time, so it would not only require the amount of time necessary for the stop at the station but slower running between stations.

Q. Particularly with the heavy equipment on these interstate trains?

A. Yes. With a light local train of two cars we would quickly get maximum speed between stations.

Q. The Chicago, Burlington & Quincy track is paralleled by the Chicago, Milwaukee & St. Paul track all the way along the Mississippi River in the State of Wisconsin, is it not, and from Savanna, Illinois?

A. Most of the way, it is on the other side of the river, it is parallel on the other side of the river.

Q. So that at best the Chicago, Burlington & Quincy only gets a half territory to draw from?

A. Yes.

Q. You get no passenger traffic from the west side at all?

A. Oh no, nothing to speak of; there are some places where we get a little, Winona, for instance.

Q. You run a stub——

A. A stub over there to Winona and Dubuque the same way.

Q. You get no passenger traffic in Wisconsin cities where you don't run a stub across the river?

A. No.

Q. It is practically a negligible quantity?

A. Yes.

Q. In your opinion, would you say that if any of these interstate limited trains were required to stop at all stations in the State of Wisconsin containing more than 200 inhabitants—would the traveling public be benefitted or injured thereby?

71 A. The chief injury would be to the C. B. & Q. Railroad; we would not get any share to speak of of the long haul through traffic. There would be a serious injury, however, to the public that is chiefly served by the use of these trains now at the few bigger points; some of these, however, are in Illinois.

Q. Assuming that the limited through train service on all the roads between the Twin Cities and Chicago is now pretty well sup-

plied with passengers, it would mean passengers going to other trains on other roads, crowding more on other roads, if you took off a train or were compelled to make local stops on these limited trains?

A. No, I think the other roads between them on their present trains could carry all the traffic we carry of the character you refer to.

Q. Without putting on any additional trains?

A. Oh it might mean additional trains in some cases, because the people wouldn't spread out over all the roads, they would concentrate on two, on the Milwaukee and North Western. That would then mean additional trains.

Q. At present you are competing with the Milwaukee and North Western on a great many of these trains on practically the same schedule?

A. Yes, and the Great Western.

Q. And you find it necessary to run as heavy equipment as you have on these trains because the passenger business demands it?

A. Yes.

Q. Your equipment of trains 53 and 54 consists of two coaches and a baggage car?

A. I don't think they ever need any more than that; they may have on occasional days.

Q. That is the regular equipment?

A. Yes that is the regular equipment.

Q. If train 58 were required to make ten additional stops going through the State of Wisconsin, could it make these eastern connections on its present time?

72 A. It could not.

Q. Do trains 48 and 47 make connections either at the Twin Cities or at Chicago?

A. Both directions.

Q. Could these trains make their connections if they were required to make ten additional stops in the State of Wisconsin?

A. Eastbound they could not possibly; westbound 47 might make most of the connections it now makes, but she wouldn't be running then because nobody would ride on her. If we made ten additional stops and were 45 minutes later at St. Paul we would not have any traffic.

Q. There would be no advantage to the Village of Cochrane in having 47 stop there because it goes through there about five o'clock in the morning.

A. That would be no practical advantage to any of those stations; 48 might be.

Q. And there would be no advantage in stopping train No. 50 at these stations, would there? Train 50 goes through after midnight.

A. No. 47 and 50 there would be no advantage whatever.

Q. Stops to be of any advantage to the small towns would necessarily be made on trains 51 and 58? Those are the local trains.

A. That is practically what everybody would want. Practically everybody along there wants train 51 westbound and 58 eastbound.

Q. We have a complaint now pending at the Village of Trempealeau and they want the same trains stopped that Cochrane does.

A. Yes.

Q. And Pepin wants the same trains and every town shown in the last, Exhibit A, would want these same trains stopped?

A. Yes.

Q. Was there anything more you want to say?

A. I don't think of anything more.

73 Mr. SCHLOSSTEIN: They are always talking of small cities or small places of 200 inhabitants. Buffalo City has got about 600 and there are about 3,000 inhabitants tributary to Cochrane. You are always talking about small cities.

Mr. LEES: You have already testified to that. They always show three to five thousand tributary.

Com. HARLOWE: Do you wish to ask Mr. Eustis any questions?

Mr. SCHLOSSTEIN: No.

Mr. LEES:

Q. As a matter of fact for the Village of Potosi we have no more than 100 inhabitants; do you know as a matter of fact what their traffic amounts to as a tributary traffic?

A. All the tributary traffic in every direction is each individual town along the road.

Mr. LEES: After talking with Mr. Roemer, what he had to say, I want to have the privilege of introducing any figures that the Commission may want here, submitting copies to Mr. Schlosstein, because we wish to make a record in this matter in view of that statute.

Com. HARLOWE: And if you want to submit a brief——

Mr. LEES: I want to submit a brief, certainly. If it were not for that statute this case would be controlled by four other opinions that this Commission has handed down on the Burlington Road, the Cassville complaint, the Pepin complaint, Maiden Rock and Diamond Bluff. We have had four complaints along there.

Com. HARLOWE: When you submit your brief send a copy to Mr. Schlosstein."

RESPONDENT'S EXHIBIT A (W. C. D.).

Chicago, Burlington & Quincy Railroad Co.

Earnings Accruing in the State of Wisconsin on Burlington Proportion of Ticket Sales for Fiscal Year Ending June 30, 1911, at Following Stations.

Stations.	Intra-state		Inter-state.		Total.	
	Passengers.	Revenue.	Passengers.	Revenue.	Passengers.	Revenue.
Bay City	1,511	449.83	1,022	490.00	2,533	939.83
Maiden Rock	3,680	1,435.12	3,365	2,416.06	7,045	3,851.18
Stockholm	2,231	446.54	975	1,005.48	3,206	1,452.02
Pepin	3,044	931.12	1,157	1,071.63	4,201	2,002.75
Nelson	3,203	890.55	643	719.11	3,846	1,609.66
Cochrane	2,804	985.87	853	765.76	3,657	1,751.63
Trempealeau	1,624	781.02	1,044	1,188.94	2,668	1,969.96
Stoddard	4,022	1,199.44	154	252.30	4,176	1,451.74
Genoa	4,797	1,617.17	215	416.40	5,012	2,033.57
De Soto	4,422	2,030.12	364	666.18	4,786	2,696.30
Ferryville	3,254	1,734.10	264	624.98	3,518	2,359.08
Lynxville	3,527	1,693.68	358	624.39	3,885	2,318.07
Bagley	2,748	993.34	312	500.30	3,060	1,493.64
Glen Haven	2,658	991.18	602	633.85	3,260	1,625.03
Total	43,525	16,179.08	11,328	11,375.38	54,853	27,554.46

PAGE BOUND V

(RESP'S EXHIBIT B.—W. C. D.).

Chicago, Burlington & Quincy Railroad Company.

Gross Receipts from Ticket Sales at the Following Stations in the State of Wisconsin for the Fiscal Year Ending June 30, 1911 (Separated as to Local, Coupon, and Total), and Total Sales, Including Local and Coupon, for Fiscal Year Ending June 30, 1910.

Stations.	Year Ending June 30, 1911.			Year ending June 30, 1910.
	Local.	Coupon.	Total.	Total.
Potosi	4,044.22	2,313.52	6,357.74	8,970.72
McCartney	448.31	.....	448.31	411.84
Cassville	5,731.79	2,063.60	7,795.39	9,307.26
Glen Haven	2,386.24	237.00	2,623.24	2,408.60
Bagley	1,707.06	653.09	2,360.15	1,850.23
Wyalusing	375.20	233.80	609.00	601.43
Prairie du Chien	20,677.05	7,074.17	27,751.22	28,544.46
Lynxville	2,982.52	79.70	3,062.22	2,973.20
Ferryville	2,572.55	175.52	2,748.07	2,552.26
De Soto	2,874.70	956.03	3,830.73	4,087.97
Victory	1,318.06	11.00	1,329.06	1,193.68
Genoa	2,404.53	274.88	2,679.41	2,154.48
Stoddard	1,679.06	.....	1,679.06	1,263.69
La Crosse	55,535.91	448,379.42	103,915.33	109,944.68
Grand Cross	4,950.47	820.05	5,770.52	4,363.02
Onalaska	823.46	375.37	1,198.83	1,319.08
Trempealeau	2,276.98	741.13	3,019.11	3,069.32
E. Winona	956.04	.....	956.04	1,005.85
Winona	18,213.56	18,477.75	36,691.31	37,782.49

Stations	Year ending June 30, 1911. Local.	Coupon.	Total.	Year ending June 30, 1910. Total.
Fountain City	4,908.65	1,844.57	6,753.22	5,579.93
Cochrane	2,065.94	126.56	2,192.50	1,775.84
Alma	9,819.03	5,357.62	15,176.65	13,199.83
Nelson	1,922.93	554.60	2,477.53	2,200.25
Trevino	1,801.07	.....	1,801.07	1,782.66
Pepin	2,671.97	412.09	3,084.06	3,375.55
Stockholm	2,134.68	29.10	2,163.78	1,968.84
Maiden Rock	5,736.05	955.09	6,691.14	6,834.56
Bay City	1,497.81	249.66	1,747.47	1,595.11
Hager	683.56	.....	683.56	844.89
Diamond Bluff	1,225.15	.....	1,225.15	1,015.30
Prescott	6,386.03	1,510.51	7,896.54	7,575.82

76 *Statement of Tonnage and Earnings at Wisconsin Stations—6/30/10 to 6/30/12.*

Station	Weight in pounds received	Weight in pounds forwarded	Earnings received.	Earnings forwarded.	Total weight in pounds.	Total Earnings.
Alma	16,855,790	11,341,710	$20,648.14	$18,626.48	28,197,500	$39,274.62
Bagley	2,167,302	2,097,342	3,742.67	3,287.53	4,264,644	7,030.20
Bay City	2,249,160	2,087,376	4,004.80	4,788.13	5,336,536	8,792.93
Calvert	50,180	413,850	82.68	227.34	464,030	310.02
Cassville	11,845,621	7,610,925	17,117.65	16,619.31	19,456,546	33,736.96
Cochrane	6,377,805	7,142,076	7,717.19	12,332.64	13,519,881	20,049.83
De Soto	5,429,704	3,111,743	5,150.02	5,758.03	8,541,447	10,908.05
Diamond Bluff	867,816	3,026,435	1,164.50	577.18	3,894,251	1,741.68
Ferryville	2,055,124	1,820,064	3,492.52	2,728.51	3,875,188	6,221.03
Fountain City	12,991,469	5,600,865	15,538.65	7,689.62	18,592,334	23,228.27

PAGE BOUND V

Genoa	28,467,–53	2,597,515	4,457.80	3,653.14	5,444,268	8,110.94
Glen Haven	4,654,850	4,515,085	12,705.02	9,217.10	9,169,935	21,922.12
Hager	1,446,418	1,813,192	1,073.36	2,233.95	3,259,610	3,307.31
La Crosse	317,077,510	192,940,000	396,742.72	269,530.28	510,017,510	666,273.00
Lynxville	3,204,799	2,060,039	5,645.67	4,462.08	5,264,838	10,107.75
Maiden Rock	6,963,843	12,863,959	10,265.87	16,933.52	19,827,802	27,199.39
McCartney	202,799	1,060,922	461.88	1,140.83	1,263,721	1,602.71
Nelson	2,658,152	1,916,016	4,384.07	4,127.50	4,574,168	8,511.57
Onalaska	3,185,687	2,297,904	3,204.28	3,944.18	5,483,591	7,184.46
Pepin	5,280,175	7,004,400	7,464.19	11,299.20	12,284,575	18,763.39
Potosi	9,646,581	8,939,240	14,914.96	8,833.17	18,586,091	23,748.13
Prairie du Chien	23,642,064	5,050,875	25,324.01	7,046.13	28,692,939	32,370.14
Prescott	11,552,990	15,915,670	10,487.29	11,444.64	27,468,660	21,931.93
Stockholm	2,318,530	5,369,868	3,796.24	7,618.49	7,688,398	11,414.73
Stoddard	2,501,952	835,079	3,480.48	1,142.70	3,337,031	4,623.18
Trempealeau	1,922,245	286,330	1,934.85	444.55	2,208,575	2,379.40
Trevino	4,054,008	1,816,231	1,176.22	966.25	5,870,239	2,142.47
Victory	892,451	572,331	1,405.49	782.82	1,464,782	2,188.31
Wyalusing	281,356	1,268,407	562.43	500.91	1,549,763	1,063.34

77 *Earnings Per Mile Between Chicago & Minneapolis From Passengers for Fiscal Year Ending June 30th.*

	1911.	1910.
Minnesota-Chicago Limited—Train 47.....	$1.72	$2.04
" 48.....	1.79	2.14
Oriental Limited—Train 49.....	1.33	1.35
" 52.....	1.77	1.92
Northern Pacific-Atlantic Express—Train 51..	1.74	1.71
" 50..	.94	1.05
Commercial Limited— " 58..	.80 (5 Mo.)	

P. S. EUSTIS,
Pass. Traf. Manager C., B. & Q. R. R.

78 The above entitled matter then coming on for hearing in the Circuit Court for Dane County, the following testimony was thereupon taken and proceedings had, to-wit:

P. S. EUSTIS being first duly sworn testified in behalf of the plaintiff as follows:

(Examined by Mr. LEES:)

Q. Mr. Eustis, you are the passenger traffic manager for the Burlington road, are you?

A. Yes, sir.

Q. How long have you been passenger traffic manager?

A. Ten years.

Q. How long have you been in the passenger traffic business with the road?

A. Thirty-one years.

Q. And are you familiar with the conditions affecting passenger traffic on the line of railroad extending from Chicago to St. Paul and Minneapolis through the state of Wisconsin?

A. I think so.

Q. I wish you would state in a brief manner the conditions affecting local passenger traffic in the state of Wisconsin, the situation geographically and in regard to population.

A. In the state of Wisconsin our road is right along the river bank and can draw traffic practically only from one side. There are no large towns to speak of. Prairie du Chien and La Crosse are of some size, and two or three others of perhaps a thousand, but the rural population all along there is light, and the railroad being on the west side of the country, right by the river bank all the way, gets very little traffic at all and gets that practically only from one side of the road. This rural population has not been growing; it has been decreasing in fact; a condition which is not peculiar to Wisconsin, or to that part of Wisconsin; we find it on the main lines of our road; Illinois, Iowa, Missouri and the older part of Nebraska. A study of the census reports will show that there is an increasing proportion of the population living in

79

the cities, and the increase during the last decade has been startling; with the result that along this part of our road with few exceptions the rural population has decreased. The population of all the towns through which we run in Grant, Crawford, Vernon, La Crosse, Trempealeau, Buffalo, Pepin and Pierce counties, has decreased in ten years from 69,334 to 67,825.

COURT: When you speak of towns do you mean villages or townships?

A. Townships. I find they are called towns in Wisconsin. I had them noted here as townships.

Q. You have a statement there, have you, of the comparative population of towns in Wisconsin through which the Burlington road operates, from 1890 to 1910?

A. I have the population taken from the United States Census reports from 1890 to 1910. Take Grant County for instance, the form of the statement is this: Grant County. Jamestown town has decreased during the period from 1900 to 1910 from 978 to 948. Potosi has decreased from 1,568 to 1,241.

Mr. LEES: There will be no necessity of reading them all over. I have a copy of this which you can check up with the census reports if you wish to make any corrections.

Q. Have you checked it for those three years yourself: 1890, 1900 and 1910?

A. No, I have had one clerk to do it and another clerk check his work.

80 Plaintiff then offered in evidence the statement identified by the witness, marked Exhibit 1.

Mr. JACKSON: It may be understood that the objection is interposed in so far as the statement doesn't agree with the census.

Mr. LEES: Yes.

(Said exhibit which was received in evidence is attached to and made part of this bill of exceptions, and is as follows:)

"Comparative Population of Towns in Wisconsin Through Which the Burlington Operates.

Grant County:

	1910.	1900.	1890.
Jamestown Town.....	948	978	961
Potosi "	1,241	1,568	2,110
Waterloo "	846	966	934
Cassville "	1,492	1,622	1,455
Glen Haven "	772	819	883
Bloomington "	631	630	587
Wyalusing "	976	918	786
Total Grant County....	6,906	7,501	7,716

Crawford County:			
Bridgeport Town	306	357	410
Prairie du Chien Town	3,669	3,827	3,737
Eastman Town	1,289	1,471	1,436
Seneca "	1,115	1,200	1,197
Freeman "	1,477	1,533	1,417
Total Crawford County	7,856	8,388	8,197
Vernon County:			
Wheatland Town	571	668	603
Genoa "	1,026	1,077	1,026
Bergen "	1,153	1,184	1,011
Total Vernon County	2,750	2,929	2,640
La Crosse County:			
Shelby Town	1,020	1,084	1,003
Campbell "	959	1,078	955
Onalaska "	2,132	2,409	2,617
Holland "	1,053	1,090	1,009
La Crosse City	30,417	28,895	25,090
Total La Crosse County	35,581	34,556	30,674

81

Trempealeau County:			
Calaedonia Town	332	345	379
Trempealeau "	1,434	1,761	1,584
Total Trempealeau County	1,766	2,106	1,963
Buffalo County:			
Buffalo Town	941	948	870
Fountain City Town	1,031	1,031	972
Milton "	332	366	389
Bellvidere "	831	749	750
Alma "	1,652	1,856	2,138
Nelson "	1,343	1,505	1,919
Total Buffalo County	6,120	6,455	7,038
Pepin County:			
Pepin Town	1,420	1,549	1,591
Stockholm "	596	671	711
Total Pepin County	2,016	2,220	2,302

Pierce County:			
Maiden Rock Town.....	1,375	1,491	1,419
Isabella "	462	447	330
Trenton "	833	965	951
Diamond Bluff "	476	506	472
Oak Grove "	748	788	824
Prescott "	936	1,002	911
Total Pierce County....	4,830	5,179	4,907"

Q. Have you a statement also of the population of cities and villages in the State of Wisconsin through which the Burlington road runs?

A. This is the statement of the population for the last three decades of the villages, showing in the last ten years a very small increase in the total, about 1,600, there being only three in the last decade that have increased at all: La Crosse from 28,895 to 30,417, Potosi from 434 to 464, Maiden Rock from 304 to 337. The rest have all shown a slight decrease or no increase at all.

Mr. LEES: I offer that statement in evidence, for comparison with the census.

(The statement so identified, marked Exhibit 2, is attached to and made part of this Bill of Exceptions, and is as follows:)

82 *"Comparative Population of Incorporated Cities and Villages in Wisconsin Through which the Burlington Road Operates, which Census is Given.*

	1910.	1900.	1890.
Potosi, Grant County.....	464	434	...
Cassville, " "	890	979	886
Prairie du Chien, Crawford County..	3,149	3,232	3,131
Lynxville, " " ..	274	332	243
De Soto, " " ..	331	387	355
Stoddard, Vernon " ..	343	...	...
La Crosse, La Crosse " ..	30,417	28,895	25,090
Onalasaka, La Crosse " ..	1,146	1,368	1,587
Trempealeau, Trempealeau " ..	535	609	...
Fountain City, Buffalo " ..	1,031	1,031	972
Alma, " " ..	1,011	1,201	1,428
Pepin, Pepin " ..	397	407	369
Stokholm, " " ..	204	...	...
Maiden Rock, Pierce " ..	337	304	343
Bay City, " " ..	252	...	...
Prescott, " " ..	936	1,002	911
Total of all Cities and Villages..	41,717	40,171	35,315
Total, omitting La Crosse, Stockholm, Stoddard, and Bay City.....	10,501	11,276	10,225
		775 deceased	
Total, per Mile of Road.....	47	50	46"

WITNESS: The next is a statement of the population by counties. We run through the western end of Wisconsin. The eight counties in question have in fact decreased in population, from 199,000 to 195,000 in the last ten years.

Plaintiff then offered in evidence the statement last identified by the witness, marked Exhibit 3, which said Exhibit 3 is attached to and made part of this Bill of Exceptions, and is as follows:

"Comparative Population of Counties in Wisconsin Through which the Burlington Road Operates.

	1910.	1900.	1890.
Grant County	39,007	38,881	36,651
Crawford County	16,288	17,286	15,987
Vernon "	28,116	28,351	25,111
La Crosse "	43,996	42,997	38,801
Trempealeau "	22,928	23,114	18,920
Buffalo "	16,006	16,765	15,997
Pepin "	7,577	7,905	6,932
Pierce "	22,079	23,943	20,385
Total of all Counties...	195,997	199,242	178,784
	3,245 deceased		
" per Mile of Road..	878	893	801"

WITNESS: Those conditions of decreasing population rather than increasing population do not make for a profitable local passenger service on the railroad. As I have said, that is not peculiar to this part of the land; it is getting to be the case in all rural districts in the older part of the country. It is true of the main line of the C., B. & Q. from Chicago to the Mississippi river in Illinois, from the Mississippi river to the Missouri in Iowa, from the Mississippi to the Missouri in the state of Missouri; it is even true in the older part of Nebraska.

Mr. JACKSON: Isn't it true generally throughout the country?

A. Not the newer part, of course.

Mr. JACKSON: Is it to the middle west?

A. Yes sir, it is true.

Q. What is the condition along the line of the Burlington railroad in the State of Wisconsin in regard to the size of the
83½ villages, outside of the city of La Crosse, as compared with the condition along the line of the Chicago & North Western and the Chicago, Milwaukee & St. Paul Railway in the State of Wisconsin—I mean generally speaking.

A. Oh, generally speaking, the towns and the population of the townships through which those roads run is much larger than is the population along the line of the C. B. & Q. in Wisconsin. Besides that, as a rule each line of the Chicago, Milwaukee & St. Paul and the North Western draws traffic from both sides of its road.

Q. The Chicago, Burlington & Quincy Railroad is paralleled on

the west side of the Mississippi river in the state of Wisconsin by the Chicago, Milwaukee & St. Paul road?

A. Yes, but what is worse than that is, we are separated from the west side by the river, and if the population across the river were quite dense we can get none of it, because the river is a bar. It is only here at several places along the river where there are towns on the west side that it is possible for us to get any traffic, and then only at a great disadvantage. For instance at Winona, the road on the other side goes right through there as a part of its line, whereas ours is necessarily a stop from our line over across the river and bank.

Q. What can you say as to whether there has been any increase in the local travel in the state of Wisconsin as compared with the through travel?

A. The increase in local traffic in ten years has been very small and the increase in through traffic has been very large; not only because of the growth of the northwest and the increasing necessity of communication between the people of the northwest and the state east, but because also our relations with the railroads in the northwest have changed. Since 1901 we have been owned by the Great Northern and Northern Pacific railroads chiefly; they are
84 the chief stockholders in the C. B. & Q.; and that has resulted in affiliations, in close traffic arrangements and through train service from Chicago right through the entire northwest.

Q. What can you say, Mr. Eustis, in reference to the adequacy of the passenger facilities furnished to villages say between 200 and 500 inhabitants in population in the state of Wisconsin as compared with the passenger facilities furnished to similar towns in the state of Wisconsin and in other states?

Mr. JACKSON: Objected to as incompetent, irrelevant and immaterial and as usurping the province of the court. That is the question in issue here.

Objection overruled. Exception by defendant.

A. The service furnished on our road in the state of Wisconsin to the smaller villages is as good as we furnish under similar circumstances elsewhere, in Illinois, Iowa, Missouri and Nebraska. There are places where the conditions are such that it is possible for villages of similar size to get good service. I notice that may be true on the Milwaukee and North Western roads. If for instance in a distance of a hundred miles there are ten good towns furnishing local traffic, necessitating and perhaps making profitable separate local service for that, it at the same time makes it possible to furnish local service for eight or ten very small intermediate towns, as an incident to that business. So that there are all over the country places where towns as small as those in Wisconsin that are seeking the service from our road do get more than one passenger train a day, but likewise there are places all over the country where towns as large and much larger do not get more than one train each way a day. I happen to have had occasion to study that question with

reference to the ability of the people of the county to reach the county seat and get back again the same day, and I picked at
85 random instances on the Sante Fe road——

Mr. JACKSON: I think, your honor, before any comparisons are properly made the proper foundation to show similarity ought to be put in evidence. We have — any means of contradicting this testimony outside of the state.

COURT: It is my practice to take the testimony that is offered. Of course the weight of it will depend upon its being shown that the conditions are similar.

Mr. LEES: If the conditions are dissimilar, of course it wouldn't be material.

A. This statement of the population by counties, which is introduced here, shows that the population of the counties through which we run in Wisconsin, pro-rated per mile of our road, shows a population of 878 people per mile of road; though it is true that as we run through only the west side of each county there is not tributary to our road that much population, the bulk of the population is more off to one side. Now I find in Iowa, on the Minneapolis & St. Louis railroad, between State Center and Grinnell and on the Minneapolis and St. Louis between Spencer and Fort Dodge, 33 miles distant in one case and 72 in the other, with a population of 2300 per mile of road in one case and 1200 in the other, the train service is such that they have but one train each way per day, that is the only service they have. I have quite a list of such instances. On the Missouri Pacific, in Kansas and Missouri and Nebraska, some instances on the Pennsylvania railroad in Ohio, where the population is 2100 per mile and 1900 per mile of road, on the Lake Shore railroad in Michigan; there is one part of the C. & N. W. railroad in Wisconsin, where the population is 1400 per mile, between Eau Claire and Hammond, a distance of 55 miles, they have but one train a day each way. In fact I have quite a list of them. I made that study with the idea of determining whether there was anything unusual in the fact that the Bur-
86 lington couldn't see the necessity or advisability of granting more than one local train a day in this particular territory in Wisconsin.

Q. Do you know about what the earnings are, the receipts, per mile of road of local trains Nos. 53 and 54?

A. I think that was introduced. The earnings for the last fiscal year, on train number 53, northbound, was 57 cents a mile; and train 54, southbound, was 48 cents a mile.

Q. How does that compare with the earnings of our limited trains, the interstate trains?

Objected to as immaterial, irrelevant and incompetent.

Objection overruled. Exception by defendant.

A. The earnings of our interstate trains, the northbound train 47 was $1.72 a mile, southbound 48 was $1.79, northbound 49 was $1.13, 52, $1.77, 51, $1.74; 54, .94; 58, .80. In addition to these

passenger earnings these trains earn a great deal from the express traffic and something from the mail, which trains like the local trains, like numbers 53 and 54, can earn but very little of, practically nothing.

Q. From your knowledge of the local passenger conditions along the line of the Burlington railroad in Wisconsin, can you say whether or not two additional local trains would be self-sustaining?

A. Certainly not. The present trains are not self-sustaining, and the additional trains cannot possibly earn as much.

Objected to as immaterial.

COURT: It may stand.

Exception by defendant.

Q. Do you know about how much it would cost per month to operate two additional trains, with the minimum of equipment? I am just speaking generally now.

87 Objected to.

Objection overruled. Exception by defendant.

A. It would cost in the neighborhood of forty cents a mile at least.

Q. That would be how many thousand dollars a month?

A. About $7,000 a month. That allows nothing whatever of course for the use of the property.

Q. I am speaking of the additional cost of putting on the train.

A. Yes.

Cross-examination:

Q. You have been at the village of Cochrane?

A. Not to step off, no sir.

Q. Do you know that your road runs through the village?

A. I understand so.

Q. Do you know whether it is the only railroad running through or near the village?

A. It is the only railroad, yes, that runs through it, and my impression is it is some distance off to another railroad.

Mr. LEES: I believe that is the fact.

Q. There is a postoffice at the village of Cochrane?

A. I believe so.

Q. Were you with the Burlington road at the time that it took the deed from the Chicago, Burlington & Northern of property in this state?

A. Yes.

Q. You knew of that transaction?

A. In a general way, yes.

Q. The Chicago, Burlington & Northern was a corporation organized under the laws of the state of Wisconsin?

—. I have forgotten where organized. It may be, but I really don't know.

88 Mr. LEES: I concede that it was. No dispute about that.

DEFENDANT'S COUNSEL: And that it was consolidated with the Minnesota corporation of the same name?

Mr. LEES: That it was consolidated with the Minnesota corporation of the same name.

Mr. JACKSON: If the court please, I was not here when the examination began, and I would like to have the testimony of Mr. Eustis taken subject to the objection that it is merely cumulative to the testimony taken before the railroad commission.

COURT: The record may so show.

D. CUNNINGHAM being first duly sworn testified as follows:

(Examined by Mr. LEES:)

Q. Mr. Cunningham, where do you reside?
A. LaCrosse, Wisconsin.
Q. And what is your position?
A. Superintendent of the LaCrosse division.
Q. Where does the LaCrosse division extend?
A Savanna, Illinois?
—. ——.
A. Yes.
Q. That part of the railroad within the state of Wisconsin is all embraced within the LaCrosse division, is it?
A. Yes.
Q. And it is all under your jurisdiction?
A. Yes.
Q. You have charge of the operation of trains, have you?
A. Yes.

Q. Are you familiar with the conditions in regard to pas-
89 senger traffic on your division?
A. Yes, sir.

Q. How long have you been superintendent?
A. About 20 years.
Q. You are familiar with the equipment and the running time of all the passenger trains on your division, are you?
A. Yes.
Q. Now do you know in a general way whether or not the limited inter-state trains mentioned here in the complaint are now making all the stops or practically all the stops they can and at the same time make their time between Chicago and Minneapolis?

Objected to as immaterial.
Objection overruled. Exception by defendant.

A. Yes.
Q. If the company were required to stop two additional limited trains, that is, one each way, at all the stations in the state of Wisconsin containing two hundred inhabitants or more, can you say approximately how many additional stops would be required?

Same objection.
Same ruling. Exception by defendant.

A. I think there are about thirteen.
Q. That is, thirteen each way?
A. Yes.

Q. Now about how much time would it take to make those additional stops within the State of Wisconsin, if you know, from your knowledge of operation?

A. Why, I should say about from two to four minutes.

Q. That is, at each station?

A. At each station. That is, the train would lose that amount of time.

Q. Do you know whether or not that would necessitate
90 the lengthening of the schedule time on these limited trains between Minneapolis and Chicago?

A. It would.

Q. What can you say with reference to whether or not it would be practical or safe to attempt to run those trains, any of these limited trains, on the present schedule and make these additional stops?

A. It wouldn't be possible.

Same objection.

COURT: The answer may stand.

Exception by defendant.

Q. Do you know what the length of time is of the Chicago, Burlington & Quincy Railroad Company between Minneapolis and Chicago as compared with the Chicago & North Western, the Chicago, Milwaukee & St. Paul, and the Chicago & Great Western railroads, as to whether it is longer or shorter than these three railroads?

A. We are the longer line.

Q. Those three railroads have trunk lines from Minneapolis to Chicago?

A. They do, yes sir.

Q. And the Chicago & Great Western does not touch the state of Wisconsin?

A. No.

Q. Are your familiar in a general way with the business done at the village of Cochrane?

A. Yes.

Q. Do you know whether or not the village of Cochrane requires additional passenger facilities any more than other villages of the same population in the state of Wisconsin?

Objected to as immaterial and calling for the ultimate question in issue here.

Objection overruled. Exception by defendant.

91 A. It does not.

Q. In the event that the company saw fit to put on two additional local trains, what effect would it have in the way of interfering more or less with the operation of its present freight trains and its work trains?

A. It would interfere very materially with them.

Q. That would be a feature over and above the expense of operating the trains themselves?

A. Yes.

Mr. JACKSON: We desire to interpose the same objection to this

testimony, that it is merely cumulative to the testimony taken before the railroad commission.

COURT: It may stand.

Exception by defendant.

Cross-examination by Mr. JACKSON:

Q. The Soo road also operates trains between Chicago and Minneapolis, does it not?

A. Yes sir, with its new line, yes sir.

Q. How does the length of their lines compare with the Burlington between those two points?

A. I can't say what their short line is. I understand it is shorter. The Soo line was to build a cut-off. Whether they built it or not I don't know. The older line is longer.

P. S. EUSTIS being recalled testified further as follows:

(Examined by Mr. LEES:)

Q. Do you know whether or not the Soo Line gets any of the through passenger traffic to speak of in competition with the Burlington and the Milwaukee and North Western lines?

92 A. We know that they get very little. Passengers who are informed will not start from Chicago earlier and get to St. Paul later, which they would have to do to ride on that road. They won't start from St. Paul earlier and get to Chicago later. So that the result is that the Wisconsin Central, as we know it, that is the Soo Line, Chicago division of the Soo Line, does very little traffic between Chicago and St. Paul and Minneapolis.

Q. It is largely local business?

A. The business is local, and it hasn't been enough to support it, because it has been through a receivership twice, I believe. But it is better now, because they have through service through the Canadian Pacific territory, and has the advantage over some of the roads in that respect.

Cross-examination by Mr. JACKSON:

Q. Your line has not been through a receivership?

A. No sir.

Q. Are your earnings good?

A. Yes sir.

Q. You are making profits on that line between Chicago and Minneapolis?

A. On our interstate traffic, yes; not on our local traffic.

Mr. LEES: On the total of both.

A. Yes.

Q. Your road is not operating at a loss?

A. No sir.

Q. And these additional stops would not result in your road operating at a loss, would it—the entire road?

A. No sir. Well, if literally we were to make stops with these

trains, it would do away with the profits, because we wouldn't get any business then.

Q. Have you the figures showing the amount of your business interstate?

93 A. Yes sir. I think that is in the record.

Q. As I understand your testimony, it would cost $7,000 a month to make these stops?

A. No sir. Literally to make the stops with these interstate trains would cost us a great deal more than that, because it would drive away several times that much traffic. I was asked what it would approximately cost to put on another train to take care of this local traffic.

Q. That would be $7,000?

A. Approximately that.

Q. Which would obivate the stopping of your interstate trains?

A. Yes sir.

Q. So that the putting on of such a train would affect your earnings to the extent of but $7,000 a month?

A. Yes.

Thereupon the plaintiff rested its case.

The defendant thereupon to maintain the issue on its part offered in evidence a certified copy of the deed of the Chicago, Burlington and Northern Railroad Company to the Chicago, Burlington and Quincy Railroad Company, dated June 1, 1899, and recorded in the office of the secretary of state of the state of Wisconsin on the 25th day of July 1899 at 10 o'clock A. M. and recorded in Volume 12 of Railroad Mortgages and Trust Deeds on page 227, marked Exhibit 4, attached to and made part of this Bill of Exceptions, and is as follows:

94 And hereupon, the defendant having proposed findings of fact and conclusions of law (being the same findings of fact and conclusions of law afterwards made and filed by the court and hereinafter set out), plaintiff by its counsel duly moved and requested the court to find as follows:

That in lieu of the finding of fact numbered four (4) of the findings proposed by the defendant, the Court find:

"4. That the passenger service afforded Cochrane when the order in question was made was adequate and reasonable, and said order was not a reasonable exercise of the powers vested in the defendant Commission.

"5. That the stopping of any one of the interstate trains mentioned in finding No. 3 at Cochrane will destroy the usefulness of said train for interstate service and impose an unnecessary restraint and burden upon interstate commerce.

"6. That putting in service an additional train to be stopped at Cochrane will impose upon the plaintiff an expense unreasonable and in excess of any income which could *be* possibly be derived from it.

"7. That the act of the Legislature of Wisconsin, Chapter 483 of the Laws of 1911 as attempted to be enforced in this case is an un-

reasonable exercise of power in that it disregards the question of whether the service at Cochrane is adequate or inadequate, and imposes a penalty upon the plaintiff solely because of the number of daily trains which it employs in interstate business, and is an attempt to interfere with interstate commerce" and plaintiff requests the Court to make the following

"Conclusions of Law."

"1. That said order of the Railroad Commission dated November 20, 1911, is unlawful and unreasonable; that it is an unwarranted interference with and obstruction of interstate commerce; and that it is confiscatory and takes plaintiff's property without due process of law.

95 "2. That judgment be entered vacating and setting aside said order of the Railroad Commission of Wisconsin dated November 20, 1911."

Which requests were, each and all, denied and refused by the court. To which denial and refusal of said requests plaintiff then and there duly made several exceptions as to each of said requests.

And thereafter the Court made and filed findings of fact and conclusions of law, together with a memorandum opinion, which are as follows:

96 And thereafter judgment was entered in accordance with said findings of fact and conclusions of law, dismissing the complaint and for $39.58 costs in favor of defendant.

And thereafter, and in due time said plaintiff made and filed exceptions to such findings of fact and conclusions of law, as follows:

(1) Plaintiff excepts to the fourth finding of fact, and the whole thereof, that is to say:

It excepts to the finding that the passenger service afforded Cochrane when the order in question was made was not adequate and was not reasonable.

And it excepts to the finding that the order mentioned in the complaint was a reasonable exercise of the powers vested in the defendant Commission.

(2) Plaintiff excepts to the first conclusion of law and to the whole thereof, that is to say:

It excepts to the conclusion that the said order of the railroad commission is neither unreasonable nor unlawful.

It excepts to the conclusion that said order of the railroad commission is neither an unwarranted interference with nor obstruction of interstate commerce.

It excepts to the conclusion that said order is not confiscatory and does not take plaintiff's property without due process of law.

97 And plaintiff particularly excepts to the whole of said conclusion of law that it is not supported or justified by the findings of fact.

Plaintiff excepts to the conclusion that judgment be entered dismissing plaintiff's complaint.

98 The above and foregoing contains all the testimony, and proceedings, rulings, decisions and exceptions had, taken, made, or given in the foregoing entitled action and all of the evidence given on the trial of said action except the Exhibits mentioned in the foregoing stipulation, which are to be considered as incorporated herein and to be produced at the hearing in the Supreme Court in accordance with said stipulation; and because none of the several matters, proceedings, rulings, decisions, objections and exceptions, testimony or evidence appear or are of record in said cause, I, the undersigned Circuit Judge before whom said cause was tried, have, for the purpose of making the same part of the record in said cause, settled and allowed this Bill of Exceptions in said cause, and the same is hereby made a part of the record therein, this 3rd day of Oct. A. D. 1912.

E. RAY STEVENS,
Circuit Judge 9th Circuit.

99 It is hereby agreed and stipulated that the above and foregoing Bill of Exceptions may be forthwith certified and settled by the court according to the above certificate and without farther notice to either party.

WOODWARD & LEES,
Attorneys for Plaintiff.
L. H. BANCROFT,
Att'y Gen'l;
RUSSELL JACKSON,
Dep-ty Att'y Gen'l;
BYRON H. STEBBINS,
Ass't Att'y Gen'l,
Attorneys for Defendant.

100 (Endorsements:) State of Wisconsin. Circuit Court. Dane County. Chicago, Burlington & Quincy Railroad Company, Plaintiff vs. Railroad Commission of Wisconsin, Defendant. Bill of Exceptions. Filed Circuit Court Dane County, Oct. 3, 1912. Nissen P. Stenjem, Clerk. Filed, October 11, 1912. Clarence Kellogg, Clerk of Supreme Court, Wis.

101 *Return to Supreme Court.*

STATE OF WISCONSIN,
Dane County, ss:

In Circuit Court for Dane County.

I, Nissen P. Stenjem, Clerk of said Court, do hereby certify that the foregoing and annexed paper writings are the original Summons and Complaint, Admission of Service; Answer, with admission of Service, Findings of Fact and Conclusions of Law; Judgment; Bill of Exceptions; Notice of Appeal to Supreme Court and Undertaking

on Appeal with Admission of Service, which have been filed in my office in the action wherein Chicago, Burlington & Quincy Railroad Company, a corporation, is plaintiff, and Railroad Commission of Wisconsin, is defendant, and that the same are hereby transmitted to the Judges of the Supreme Court, of the State of Wisconsin, in pursuance of said notice of appeal.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Madison, in said County, this 8th day of October, A. D. 1912.

[SEAL.] NISSEN P. STENJEM, *Clerk.*

(Endorsements:) State of Wisconsin. Circuit Court for Dane County. Chicago, Burlington & Quincy Railroad Company, a corporation, Plaintiff, vs. Railroad Commission of Wisconsin, Defendant. Return to Supreme Court. Filed Oct. 11, 1912. Clarence Kellogg, Clerk of Supreme Court, Wis.

102 [Endorsed:] State of Wisconsin. Circuit Court for Dane County. Return to Supreme Court.

103 And afterwards, to-wit the 22nd day of February, A. D. 1913, the same being the fifteenth day of said term, the following proceedings were had in said cause in this court:

Dane Circuit Court.

CHICAGO, BURLINGTON & QUINCY R. R. Co., Appellant,
vs.
RAILROAD COMMISSION OF WISCONSIN, Respondent.

And now at this day came the parties herein, by their attorneys, and this cause having been argued by G. M. Woodward, Esq., for the said appellant, and by Messrs. Russell Jackson, Deputy Attorney General, and B. H. Stebbins, Esq., Assistant Attorney General for the said respondent, and submitted and the court not being now sufficiently advised of and concerning its decision herein took time to consider of its opinion.

104 And afterwards, to-wit: on the 11th day of March, A. D. 1913, the same being the sixteenth day of said term, the judgment of this court was rendered in words and figures following, that is to say:

CHICAGO, BURLINGTON & QUINCY R. R. Co., Appellant,
vs.
RAILROAD COMMISSION OF WISCONSIN, Respondent.

This cause came on to be heard on appeal from the judgment of the circuit court of Dane county and was argued by counsel. On consideration whereof; it is now here ordered and adjudged by this court, that the judgment of the circuit court of Dane County

in this cause, be, and the same is hereby affirmed with costs against the said appellant taxed at the sum of Thirty-four and 25/100 dollars, ($34.25).

Justices Kerwin & Timlin dissent.

105 Thereupon the opinion of the Court by Justice Vinje was filed in words and figures following, that is to say:

106 No. 113.

STATE OF WISCONSIN:

In Supreme Court.

CHICAGO, BURLINGTON & QUINCY R. R. Co., Appellant,
vs.
RAILROAD COMMISSION OF WISCONSIN, Respondent.

Action to determine the validity of an order of the Wisconsin Railroad Commission requiring the plaintiff railway company to stop two of its passenger trains each way daily at the station of Cochrane, Wis., pursuant to the provisions of Section 1801, Stats. 1911. One Schlosstein, a resident of Cochrane, filed a petition with the Railroad Commission, alleging that the passenger service at said station was inadequate, and praying for an order compelling plaintiff to stop two of its passenger trains each way daily at said station as required by the statute. Thereupon, after due notice, a hearing was had before the Railroad Commission, from which it appeared that the passenger service at Cochrane was as follows: North-bound train No. 91, a freight, carrying passengers, daily, except Sunday, due at 10:17 a. m.; passenger train No. 53, north-bound, daily, due at 10:58 a. m.; south-bound passenger train No. 54, daily, due at 9.09 a. m.; and freight train No. 92, south-bound, carrying passengers, daily, except Sunday, due at 1:10 a. m. It is admitted that Cochrane has a post office. Further facts shown by the hearing are thus stated in the decision of the Railroad Commission: "Cochrane is an incorporated village of about 260 inhabitants. It has four general stores, two saloons, two lumber yards and planing mills. The village of Buffalo, having a population of about 250, lies a short distance west of Cochrane. Alma, the county seat of Buffalo county, having a population of 1,000, is situated 8.3 miles north of Cochrane. Fountain City, having a population of approximately 1,000, lies about eight miles south of Buffalo. All of the limited trains on respondent's line stop at Alma. Two passenger trains each way daily stop at Fountain City. The respondent's road is located on the east bank of the Mississippi river, and runs through a territory that is sparsely settled. About 90 per cent. of all the passenger traffic over this line consists of people going from Chicago to St. Paul and points in Minnesota, the Dakotas, and the entire Northwest and Canada. Two trains are run each way daily between Chicago and Portland and Seattle. One train leaves Chicago in

the morning, and from St. Paul runs over the Northern Pacific line to the Northwest. Another train leaves Chicago in the evening, and from St. Paul goes over the Great Northern line to the Northwest. There are two corresponding trains east bound. There is also a train each way daily between Chicago and Minneapolis, known as the Minnesota Limited, which serves the traffic to
107 Minneapolis and St. Paul on the one hand, and to Chicago and St. Louis on the other. In addition to these interstate trains, there is a local train each way running between Savanna and Minneapolis, which takes care of the traffic in the state of Wisconsin. The west-bound train from Chicago to the Northwest by way of the Northern Pacific line from St. Paul is known as train No. 51, and is composed of standard Pullman and tourist cars. The number of cars in the train is 12. The corresponding east-bound train is known as train No. 53, and contains the same number of cars. Similar trains routed over the Great Northern line from St. Paul to and from the Northwest are known as trains 49 and 52, respectively. Trains 47 and 48 are each known as the Minnesota Limited, and each is composed of one observation car, three standard sleeping cars, one St. Louis standard sleeping car, two Chicago coaches, one combined mail and baggage car, and two baggage cars. Train No. 58 consists of two sleeping cars, and from five to eight baggage and express cars. All of these interstate trains are heavy, and run at a maximum speed of 50 miles per hour in order to make connection with trains for the East at Chicago and with trains for the West at St. Paul. As the distance between Chicago and St. Paul over respondent's line is 33 miles greater than that over the line of the Chicago & Northwestern Railway Company, and 27 miles greater than that over the line of the Chicago, Milwaukee & St. Paul Railway Company, it becomes necessary for the respondent to operate its trains at a high rate of speed in order to meet the schedule time of its competitors' trains between such points as well as to make the connections mentioned."

It appeared that the petitioner's chief complaint was that it was impossible for residents of Cochrane and vicinity to go to any point either north or south by train to transact business of any consequence and return on the same day, and that the railroad company's objection to stopping any more trains was because all its other trains were heavy interstate limited trains, which were run in competition with like trains upon other roads, and that, if it was required to stop such trains at all stations having a population of 200, it would be impossible to continue them in service as limited trains. The Railroad Commission stated in its decision that, independent of any statutory provisions on the subject, it would feel constrained to hold that the existing passenger service afforded the village of Cochrane was adequate under the circumstances, and that, therefore, interstate trains could not be required to stop at that station. But that, since the statute fixed the quantum of passenger service for every station coming within the classification made, it deprived the Railroad Commission of any discretion in the matter, and the order was made accordingly.

To review the order of the Railroad Commission the present action was brought pursuant to the provisions of section 1797*m*64, Stats. 1911. The trial court, in addition to facts already recited, found "that the passenger service afforded Cochrane when the order in question was made was not adequate or reasonable; that the said order was a reasonable exercise of the powers vested in the defendant Commission." As conclusions of law the court held the order valid, and entered judgment dismissing plaintiff's complaint upon the merits, from which judgment plaintiff appealed.

108 VINJE, *J.*:

It will be observed from the foregoing statement of facts that the Railroad Commission based its order upon the statute (section 1801, Stats. 1911), and not upon an exercise of discretion or judgment on its part that the service was inadequate. Indeed, it states that, were it not for the statute depriving it of the exercise of discretion, it would come to a contrary conclusion, and refuse to make the order requiring additional trains to be stopped at Cochrane. The trial court, however, finds that the passenger service at Cochrane was not adequate or reasonable, and that the order of the Railroad Commission was a reasonable exercise of the powers vested in it. So we have a situation where the Railroad Commission disaffirms the exercise of discretion in making the order and the trial court affirms it on the ground that it was made pursuant to a reasonable exercise of the powers vested in it, and that upon the facts found by the trial court the order was right.

(1) The question, therefore, presents itself, Can the circuit court for Dane county, in which jurisdiction to test the validity of orders made by the Railroad Commission is vested, make an administrative order based upon the original exercise of its own discretion? The provisions of the statute authorizing the action to review orders made by the Railroad Commission, in so far as they speak definitely, must control. Section 1797—16, Stats. 1911, reads: "Any railroad or other party in interest being dissatisfied with any order of the Commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or service, may commence an action in the circuit court against the Commission as defendant to vacate and set aside any such order on the ground that the rate or rates fares, charges, classifications, joint rates or rates, fixed in such order, is unlawful, or that any such regulation, practice or service, fixed in such order, is unreasonable, in which action the complaint shall be served with the summons." It will be noticed that the statutory power of the circuit court is limited to that of vacating and setting aside an order made by the Railroad Commission or refusing to do so and that the order can be attacked only on two grounds: One, that the rate or rates, fares, charges, classifications, joint rate, or rates fixed in such order is unlawful; and the other, that any such regulation, practice, or service fixed in such order is unreasonable. The statute, therefore, delegates only judicial functions to the court by empowering it to pass upon the

lawfulness or reasonableness of the Railroad Commission's order. To clothe a tribunal with the power to adjudge whether or not an order made by another body is reasonable is quite different and distinct from investing such tribunal with the power to
109 make a reasonable order in the first instance. The one is a delegation of judicial power, the other of administrative power. The circuit court of Dane county can exercise no administrative functions, and none were attempted to be delegated to it by the statute referred to. That the Legislature intended the circuit court only to review orders made by the Railroad Commission, and not to make new ones based upon evidence taken in court, is made still clearer by sections 1797—16*b*, 1797—16*c*, and 1797—16*d*, which provide for sending the case back to the Railroad Commission for reconsideration, and refinding if new or additional evidence is adduced. In the instant case, therefore, since the Railroad Commission did not make an order based upon its discretion, but one based upon the statute, the only question presented by the action was the lawfulness of the order, which, of course, raised the question of the constitutionality of section 1801, Stats. 1911. And that question is the only one the appeal presents upon the merits.

(2) The material part of the section reads as follows: "Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more, through or within one-eighth of a mile of which its line or road runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that extent; and, if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every such station." It is not seriously contended by either side but that the statute, if valid, applies as well to interstate passenger trains as to domestic trains. If it does not apply to interstate trains, then it does not apply to the plaintiff at all, for it runs no domesic passenger train in Wisconsin. The local train stopping at Cochrane is spoken of by counsel for plaintiff as though it were a domestic train. But the evidence shows that it runs from Savanna, Ill., through Wisconsin, to Minneapolis, Minn., and from there back to Savanna, Ill. It is none the less an interstate train because it is a local or unlimited train. The speed of a train or its infrequency of stopping furnish no absolute criteria of an interstate character. A train is an interstate one if it runs from one state into another, and is engaged in traffic between the two, irrespective of its speed or the number of stops it makes. It is quite evident that the Legislature must have intended to include interstate trains as coming within the purview of the statute, else its enactment would have been a mere idle ceremony. It is doubtful if there be a single station in the state of less than 5,000 inhabitants which has passing through it four or more domestic trains each way daily, and there certainly are few, if any, of any size that have that many domestic trains daily each way. So it seems clear that interstate trains were intended

to be included within the terms of the statute. There is certainly nothing in its language to indicate any limitation as to the character of the passenger train, and we must hold that there is none.

(3) It is also clear that accommodation freight trains are excluded. They are not passenger trains in the ordinary sense of the term. Their time of arrival and departure is quite uncertain, they furnish no means of carrying anything but hand baggage, and their passenger service can in no sense be said to be adequate or reasonable. People v. St. Louis, etc., R. Co., 176 Ill. 512, 52 N. E. 292, 35 L. R. A. 656; Missouri Pac. Ry. Co. v. Kansas, 216 U. S. 262, 280, 281, 30 Sup. Ct. 330, 54 L. Ed. 472. Construing the statute, therefore, as including interstate trains and excluding accommodation freight trains, we face this question: Is it constitutional? The major part of plaintiff's brief is devoted to showing that the passenger service is adequate at Cochrane, and that it would be placing an
110 unreasonable burden upon it to require an additional local train or to require one of its limited trains to stop there We are concerned only indirectly with the conditions shown by the evidence in the instant case Such conditions are important, but only as an index of conditions presumably existing in similar localities throughout the state, and as bearing in general upon the constitutionality of the act in question. It is claimed that the statute is unreasonable and void, and that the order made is confiscatory, in that it operates to take plaintiff's property without due process of law and creates an unwarranted burden upon interstate commerce; that it is purely arbitrary, as it takes no account whatever of any general or particular conditions; and that, if four trains are run daily each way, then two each way must be stopped daily, regardless of whether or not the necessities or convenience of the people of the village require it. By chapter 362, Laws of 1905, the Legislature conferred upon the Railroad Commission the power to regulate rates, services, etc., of railway companies. This act, impliedly at least, repealed the provisions of section 1801, Stats. 1898, as it then stood. By chapter 483, Laws of 1911, section 1801 was re-enacted with certain amendments and made to read as above quoted. In the meantime the Railroad Commission by a series of orders made in cases similar to the one at bar had held that passenger service like that given Cochrane was reasonably adequate. See Tate v. C., B. & Q. R. Co., 2 W. R. C. R. 348; Kemp v. C., B. & Q. R. Co., 3 W. R. C. R. 350; Maiden Rock v. C., B. & Q. R. Co., 4 W. R. C. R. 922; Dyer v. C., M. & St. P. R. Co., 2 W. R. C. R. 621; and Schmidt v. G. N. R. Co., 4 W. R. C. R. 121. From such rulings and legislation it must be inferred that the Legislature deemed it best to exercise its own judgment as to what should be considered reasonably adequate passenger service for stations containing a population of 200 or more.

(4) That it was within its power to legislate specifically upon this subject after having delegated to the Railroad Commission the general powers found in chapter 362, Laws of 1905, and the acts amendatory thereof, cannot be questioned. By conferring the powers mentioned upon the Railroad Commission, the Legislature

did not part with the right to exercise such powers itself whenever it saw fit. The Legislature cannot exhaust or diminish its own powers by conferring the right upon subordinate commissions or bodies to exercise administrative functions. The quantum of legislative power remains the same. It is nondelegable.

(5) Before considering the question of the constitutionality of the statute, either on the ground that it is unreasonable as applied to domestic traffic or that it is repugnant to the interstate commerce clause of the federal Constitution, it may be well to advert to a few well-settled principles governing the right of a state to regulate railroad passenger service within its borders. The authorities are practically unanimous in declaring that the primary duty of a railroad is to furnish reasonably adequate local service, both domestic and interstate. Lake Shore, etc., Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 20 Sup. Ct. 722, 44 L. Ed. 868; M. & St. Louis Ry. Co. v. Minnesota, 193 U. S. 53, 24 Sup. Ct. 396, 48 L. Ed. 614; Miss. R. Co. v. Ill. Cent. R. R. 203 U. S. 335, 27 Sup. Ct. 90, 51 L. Ed. 209. When this primary duty is met, the road may then provide special facilities for the accommodation of through or interstate traffic, and any attempt on the part of a state to regulate such special service will be held void if it interferes with interstate commerce. Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 20 Sup. Ct. 722, 44 L. Ed. 868. The rule is thus stated by Mr. Justice Day in Herndon v. Chicago, Rock Island & Pac. Ry. Co., 218 U. S. 156, 30 Sup. Ct. 638, 54 L. Ed. 970; "Where a railroad company has already provided ample facilities for the adequate ac-
111 commodation of the traveling public such as may be proper and reasonable at any given point, and operates interstate commerce trains, carrying passengers through the same places, at which such interstate trains do not stop, a state regulation which requires the stopping of such interstate trains, in addition to ample facilities already provided, to the detriment and hindrance of interstate traffic, is an unlawful regulation, and a burden upon interstate commerce." The difficulty, however, lies, not in determining what legal principle is applicable to a given situation, but in deciding the fact as to what constitutes reasonably adequate service.

(6) The right of a state to demand reasonably adequate interstate as well as domestic service has been established beyond question. Lake Shore, etc., Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 20 Sup. Ct. 722, 44 L. Ed. 868; Miss. R. R. Co. v. Ill. Cent. R. R., 203 U. S. 335, 27 Sup. Ct. 90, 51 L. Ed. 209; Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230. In the Lake Shore Case, supra, the court, speaking of the validity of a statute of Ohio regulating the stoppage of trains, said: "Certainly, the state of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers traveling through the state between points outside of its territory. * * * * It was for the state to take into consideration all the circumstances affecting pas-

senger travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the same state on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the state to places beyond its limits, or the convenience of those outside of the state who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the state without stopping." 173 U. S. 301, 302, 19 Sup. Ct. 471, 43 L. Ed. 702. In Atlantic Coast Line R. Co. v. Wharton, supra, it was held that the effect of an order made by state authority as a direct regulation of interstate commerce may be tested by the local facilities existing at the station or stations at which the interstate commerce train has been commanded to stop.

(7) In determining whether or not reasonably adequate service is furnished, regard may be had to public convenience as well as public necessity. Lake Shore, etc., Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Atlantic Coast Line R. Co. v. N. C. C. C., 206 U. S. 1, 27 Sup. Ct. 585, 51 L. Ed. 933, 11 Ann. Cas. 398; State v. C., M. & St. P. Ry. Co., 140 N. W. 70, decided February 18, 1913. "The power of the state," says the court in the Lake Shore Case, supra, "by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any other power granted to the general government is to be determined by the same rules." 173 U. S. 300, 19 Sup. Ct. 471, 43 L. Ed. 702. In State v. C., M. & St. P. Ry. Co., supra, our court says: "It is common knowledge that practices and conditions in the conduct of the railway passenger traffic of the country which, in a superficial view, seem, in
112 their effect, of slight importance to travelers, do in reality materially and substantially affect their comfort and convenience, and thus tend to affect their health. They therefore furnish a ground for controlling the conduct of such business in the interest of the comfort and convenience of the public."

(8) That a state regulation may indirectly or in a slight degree affect or interfere with interstate commerce does not render it void if that is not its purpose and if it has another legitimate object. Diamond G. Co. v. U. S. G. Co., 187 U. S. 611, 23 Sup. Ct. 206, 47 L. Ed. 328; McDermott v. State, 143 Wis. 18, 126 N. W. 888, 21 Ann. Cas. 1315; Independent Tug Line v. Lake Superior Lumber & Box Co., 146 Wis. 121, 131 N. W. 408; State v. Chicago, Mil. & St. P. Ry. Co., 140 N. W. 70, decided February 18, 1913.

The principles above referred to may be summarized as follows: (a) Every station is entitled to reasonably adequate domestic and interstate service; (b) state regulations which go no further than to require such service are neither unreasonably nor unduly restrictive of interstate commerce; (c) a state has the right to demand

reasonably adequate interstate service as well as domestic service at any station within its borders; (d) in determining what is reasonably adequate service due regard may be had to the convenience of the public; and (e) a slight or indirect interference with interstate commerce does not render a state regulation void provided it is not made for such purpose but for another legitimate object.

(9) Turning now to the application of these principles to specific cases, we find that a statute of Ohio which required that "each company shall cause three each way, of its regular trains carrying passengers, if so many are run daily, Sunday excepted, to stop at a station, city or village containing over three thousand inhabitants, for a time sufficient to receive and let off passengers," was sustained as not unreasonably interfering with interstate commerce or unreasonable on any other ground. Lake Shore, etc., Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702.

In Atlantic Coast Line R. Co. v. N. C. C. C., 206 U. S. 1, 27 Sup. Ct. 585, 51 L. Ed. 933, 11 Ann. Cas. 398, an order of a state railroad commission requiring the plaintiff to make daily connections at Selma with the Southern Railway was upheld, though the evidence showed a compliance therewith would result in a financial loss to plaintiff, and require it to run an additional train. A state statute requiring the stoppage of all regular passenger trains running wholly within the state, at its stations at all county seats, long enough to receive and discharge passengers with safety, is valid, though such trains may carry interstate passengers who are to connect with interstate trains, and also carry the mails of the United States. Gladson v. Minnesota, 166 U. S. 427, 17 Sup. Ct. 627, 41 L. Ed. 1064. In St. Louis, etc., R. Co. v. Town of Troy, 25 Okl. 749, 108 Pac. 753, the Supreme Court of Oklahoma held that an order of the Railroad Commission requiring plaintiff to stop two passenger trains each way at the station of Troy, containing about 300 inhabitants, with one general store and two small stores, was not unreasonable. Substantially to the same effect is Missouri, etc., Ry. v. Witcher, 25 Okl. 586, 106 Pac. 852. Orders of a Railroad Commission requiring an additional train each way to stop daily at the stations of Blue Creek and Arden, each containing about 200 people, was upheld by the Supreme Court of Washington in State v. R. Com., 60 Wash. 218, 110 Pac. 1075, chiefly on the ground that public convenience required their stoppage in order that the residents thereof might be enabled to go to the county seat to transact business and reurn the same day. In Atchison, etc., R. Co. v. State, 28 Okl. 476, 114 Pac. 721, it appeared that two of plaintiff's passenger trains met at Belva, a station containing
113 about 30 people, but with a thickly settled community around it. An order requiring an additional train each way daily to stop on flag signal was sustained.

In Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230, it appeared that 11 trains daily stopped regularly at a small station which was a junction point with a short branch road. It was held that a state order requiring the stoppage on signal of two of its fast mail trains was unreason-

able. And where four trains a day each way stopped at a station containing about 4,500 people, a state statute which required the stoppage at that place of a through interstate passenger and mail train was held invalid. St. Louis, etc., Ry. Co. v. State, 85 Ark. 284, 107 S. W. 989. Likewise, where three south-bound trains stopped at a county seat of about 1,200 inhabitants, an order of the State Railroad Commission requiring the stopping of two additional south-bound interstate mail and passenger trains was held unreasonable. Miss R. R. Co. v. Ill. Cent. R. R., 203 U. S. 335, 27 Sup. Ct. 90, 51 L. Ed. 209. And a state statute which required a through interstate passenger and mail train to turn aside from its direct route and run to a county seat 3½ miles distant and back again was held unconstitutional; it being admitted that the railway company otherwise furnished the county seat adequate passenger service. Illinois Cent. R. Co. v. Illinois, 163 U. S. 142, 16 Sup. Ct. 1096, 41 L. Ed. 107. In Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 20 Sup. Ct. 722, 44 L. Ed. 868, a statute of Illinois which required all regular passenger trains to stop a sufficient length of time at county seats to receive and discharge passengers with safety was held unconstitutional as applied to a county seat at which four regular passenger trains each way daily stopped. It was sought to require the stopping of an interstate limited special in addition to the four passenger trains stopping regularly. In distinguishing this case from the case of Lake Shore, etc., R. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702, the Court says: "This case is readily distinguishable from the one under consideration in the fact that the Ohio statute required only that three regular passenger trains should stop at every station containing three thousand inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed." 177 U. S. 520, Sup. Ct. 721, 44 L. Ed. 868. In Herndon v. Chicago, Rock Island & Pac. Ry. Co., 218 U. S. 135, 30 Sup. Ct. 633, 54 L. Ed. 970, it was held that a statute of Missouri which required all passenger trains to stop at all junctions within the state was unreasonable and void as applied to the junction at Lathrop, which had a population of about 1,000 and had two passenger trains each way stopping daily. It was there sought to secure the stoppage of an interstate limited train. See note to this case in 54 L. Ed. 970.

Viewing the statute in question in the light of the principles of law relevant thereto and their application to particular states of fact as disclosed by the adjudicated cases, we must determine whether it falls within or without the legislative field. That the Legislature may prescribe reasonable regulations as to the stoppage of trains is admitted. Such admission, however, includes within it the further admission that within the field of its discretion the Legislature is supreme, and its determination must control unless clearly unreasonable or unless it contravenes some specific or implied constitutional provision, state or federal. It is not for the
114 court to square the act with its own judgment and declare it void if it fails to measure up to such standard. The

court's duty is to sustain the statute, unless it can be said that in its enactment the Legislature exceeded its powers.

It will be observed that as a basis for a minimum passenger service the population of a station and the number of passenger trains passing it each way daily are made the main tests. That such tests are germane to the subject of the act can scarcely be doubted. The population of a station is usually, not only a fair index of the amount of business the station itself will furnish, but also of that of the population tributary thereto, while the number of passenger trains run daily past a station measures the amount of passenger business done over the road, and, in a degree, its ability to furnish aditional facilities to the station without financial loss or without undue interference with through traffic. The furnishing of adequate mail facilities for the residents of the village and of the surrounding country was also in the legislative mind, as is evidenced by the provision that the station must have a post office in order to enjoy the service provided for in the act. So it must be deemed that a proper basis of classification is made by the statute. The evidence shows that, while in the instant case the population of Cochrane is only 260, yet almost 3,000 people are served by the railway at that point, and that is so despite the fact that the road runs along the western margin of the state with the Mississippi between it and Minnesota, thus cutting off, as the fact is, practically all passenger business from the West. It is fair, therefore, to presume that inland stations of no greater population would have tributary to them a greater number of people to be served at them than Cochrane has. When this fact is borne in mind, the placing of the population as low as 200 does not appear so unreasonable. Besides, the statute affects only one train if three or less are run daily. If four or more are run daily each way, it affects only two. It leaves the road free to run unhampered as many more trains per day as it may desire. It therefore falls within the rule of Lake Shore, etc., Ry Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702, and not within that of Cleveland, etc., R. Co. v. Illinois, 177 U. S. 514, 20 Sup. Ct. 722, 44 L. Ed. 868, or that of Herndon v. Chicago, Rock Island & Pac. Ry. Co., 218 U. S. 135, 30 Sup. Ct. 633, 54 L. Ed. 970. Under the passenger train schedule in force at Cochrane, it renders it practically impossible for its residents to go either north or south to nearby towns, transact business, and return the same day. This situation affects their convenience, and, as has been shown, that is a consideration of some importance in determining the reasonable adequacy of service. True, as has been observed before, the statute must stand or fall upon its main scope and upon its general application to villages throughout the state, and not upon its particular application to the village of Cochrane. But the fact remains that where only one train a day each way stops at a station its residents are quite likely to be more or less hampered in the convenient transaction of business with neighboring towns along the line either on the one side or the other or both.

It is urged that, if plaintiff should be required to stop one of its limited interstate trains, it would have to do so at the expense of

interstate commerce. This contention is true only in part. The evidence discloses that plaintiff's receipts from domestic passenger business at Cochrane for the year 1911 were $985.87, and from interstate business $765.76. At 14 stations in Wisconsin, including Cochrane, varying in population from 200 to 535, for the same year its receipts from domestic passenger business were $16,179.08 and from interstate business $11,375.38. It will thus be seen that even from such small stations plaintiff's receipts from interstate passenger business is over one-third that of its total passenger receipts. When, therefore, additional service is required, it is not accurate to say that it is at the expense of interstate traffic. Such additional service benefits interstate as well as domestic travel, and the state has the right, and is in duty bound, to see that both are adequately provided. The fact must not be overlooked that travel from a point in this state to a point in another state, or from a point outside the state to a point within it, is just as much interstate travel as is travel through the state between points outside its boundaries. Each kind of interstate as well as domestic travel is entitled to reasonably adequate service, and none is entitled to more at the expense of the other. The interstate passenger traffic at these small stations being a substantial part of their passenger business, the state has the right to make reasonable regulations to promote it, and to further the necessities and convenience of interstate passengers.

115

It will be noticed that neither the statute nor the order of the Railroad Commission requires the plaintiff to stop one of its limited interstate trains. The plaintiff has the option to do that or to put on an extra train each way daily which shall stop at Cochrane. To do the former it is claimed would seriously interfere with its through traffic, as competition is keen and time is of the essence of such traffic. This no doubt is true. But since the primary duty of a carrier is to give reasonably adequate service to stations along its line, and since the Legislature has within the field of its discretion fixed the minimum of such service at a quantum which cannot judicially be declared unreasonable, or held to unduly interfere with interstate commerce, the objection becomes untenable.

(10) The evidence shows that to put on an extra local train each way daily would cost about $7,000 per month, and that the estimated receipts would not equal the expense. It is not shown, however, that the whole passenger revenue of the road in this state is not ample to meet the additional expense with a fair margin of profit. But, even if that were not so, if the service required is a reasonable one, it is no answer to say that it would have to be performed at a financial loss. In Atlantic Coast Line R. Co. v. N. C. C. C., 206 U. S. 26, 27 Sup. Ct. 595, 51 L. Ed. 933, the court says: "Because, as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result." This is reaffirmed in Missouri Pac. Ry. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. Ed. 472. In determining what is reasonably adequate service, the paramount factor is public

need and convenience, modified no doubt by many other considerations, such as the size of the station, the extent of the demand for transportation, as well as the reasonable cost of giving additional service.

Upon the whole, it must be held that the statute in question has suitable relation to the public need and convenience, is founded upon an appropriate basis of classification, and cannot judicially be declared to require more than reasonably adequate passenger service for the stations embraced within its terms. The judgment of the circuit court must therefore be affirmed on the ground that the order made by the Railroad Commission was a lawful order.

Judgment affirmed.

Kerwin, J., dissents.

116 And thereafter on the 13th day of March, A. D. 1911, the dissenting opinion of Justice Timlin was filed in words and figures folowing, that is to say:

117 STATE OF WISCONSIN:

In Supreme Court.

No. 113.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Appellant,
vs.
RAILROAD COMMISSION OF WISCONSIN, Respondent.

TIMLIN *J.* (dissenting):

I am unable to assent to the correctness of the majority opinion in this cause. By statutes now known as sections 1797—1 to 1797—38, a comprehensive plan of railroad regulation for this state is established. The Railroad Commission, an administrative board or body, is empowered to ascertain, declare, and enforce reasonable rates and adequate service, etc. This is done by order made upon complaint (section 1797—14 et seq.), and applies to all railroads in the state. Such order is reviewed in the circuit court by action against the Commission under sections 1797—15, 1797—16, et seq. If any railroad shall fail, neglect, or refuse to obey any lawful requirement or order made by the Commission or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such railroad shall forfeit and pay into the state treasury a sum of not less than $100 nor more than $10,000 for each offense. Section 1797—27. While these statutes were in force chapter 483, Laws of 1911, was enacted. This last purports to amend section 1801 of the Statutes. It provides: "Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more, through or within one-eighth of a mile of which its line or roads runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger

train each day each way at such station, if trains are run on such road to that extent; and, if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every such station. Every such corporation neglecting or refusing fully to comply with this section, after demand therefor by any resident of such village, shall forfeit not less than twenty-five nor more than fifty dollars for each and every day such neglect or refusal shall continue, one-half to the use of the person prosecuting therefor." By this statute the Legislature undertook to take from the authority of the Railroad Commission the power to decide upon the adequacy of existing service and itself fixed a positive or arbitrary rule relative to the service. It also provided for the enforcement of this duty by a qui tam action for a forfeiture of not less than $25, nor more than $50 per day. In the instant case, the Railroad Commission, while finding that adequate service to the village of Cochrane did not require it, nevertheless undertook by order made upon complaint, evidence, and hearing to reimpose the duty on the railroad company which was already imposed thereon by the statute last quoted. I do not think the Railroad Commission had any jurisdiction so to do. Under this order of the Commission, the railroad company is liable to a penalty for disobedience thereof amounting to not less than $100 nor more than $10,000 for each offense. Under chapter 483, supra, it was liable to a penalty of not less than $25 nor more than $50 for each and every day that it omitted to stop two passenger trains each day each way. Penalties cannot be multiplied or enlarged in this way. If the penalty is not enlarged, then there is no penalty for disobedience of the order, and the order is an idle form of words. If the penalty fixed by chapter 483 still applies to infractions of that statute and controls notwithstanding the order of the Commission, then the order is void because unenforceable.

118 Again, the order of the Commission relates to a specified village (Cochrane), while chapter 483, supra, relates to each and every village along the line of the road in Wisconsin answering the calls of the statute. If the Railroad Commission had no jurisdiction to decide that the service complained of was adequate, it follows that it had no jurisdiction to decide that such service was inadequate. No jurisdiction is conferred upon that body to entertain a complaint and proceedings for the purpose of supplementing the legislative declaration of duty by an unenforceable declaration on the part of the Commission.

Next, when the matter reached the circuit court, that court undertook not simply to review the order of the Railroad Commission with respect to the reasonableness or unreasonableness of such order, but assumed the administrative duty of deciding in the first instance that the service formerly rendered was inadequate and affirmed the order of the Railroad Commission upon a ground never passed upon by that administrative body. Clearly I think the circuit court had no jurisdiction so to do. No such power is conferred upon the circuit court by statute, and surely judicial power at common law does not include it. If either of these positions is correct, I think we

should reverse the order of the circuit court and the order of the Commission as made without jurisdiction, and not overlook these fundamental errors, and treat the case as if it were here upon a writ of error to a judgment of conviction in the qui tam action authorized by chapter 483, supra.

Next, it appears without dispute that the appellant is and has been supplying the village in question with one passenger train each way each day and with one mixed or accommodation train each way each day. Further, it appears without dispute that the appellant is not within chapter 483, supra, at all, and therefore not liable on account of intrastate trains because it does not run the requisite number of such trains. It does, however, run four interstate passenger trains each day each way, so that the effect of the statute in the instant case is to require the defendant to stop its interstate passenger trains each way at this diminutive village, and at all villages of at least this population on its line of road in the state of Wisconsin.

The appellant enters the state of Wisconsin at a point where the southern boundary line of said state touches the Mississippi river and runs thence along the easterly bank of the Mississippi river to the city of Prescott in Pierce county, Wis., where it crosses the St. Croix river and enters the state of Minnesota, a total of 223.13 miles in length within this state. Along this line there are 7 villages of more than 200 and less than 300 inhabitants each, 5 villages of more than 300 and less than 400 inhabitants each, and 21 stations all together, Alma having a population of 1,000 and the next station on appellant's line north of Cochrane is 8.3 miles distant therefrom. Fountain City with a population of 1,000 is on appellant's line about 8 miles south of Cochrane. All of appellant's limited interstate trains stop at Alma, and two passenger trains each way each day stop at Fountain City. This is an important consideration with reference to the adequacy of train service in so far as the rural population near Cochrane is considered. The total revenue from the sale of passenger tickets at the station in question for the year ending June 13, 1911, is $1,751.63, of which $985.87 was from the sale of intrastate tickets and $765.76 from the sale of interstate tickets. The appellant must either stop its interstate limited trains or put on an extra passenger train in order to comply with chapter 483, supra. To put on an extra train will require an outlay of $84,000 per year, which it appears must cause the appellant a great pecuniary loss.

119 I think the true way in which to uphold state authority over interstate railroads is to be just and reasonable in its exercise. Grasping for more than this, the state is apt to lose the little it has. The decision of the Commission that the former service was adequate, while it cannot be given controlling weight, is, however, significant. I do not think that public convenience requires either the stopping of these interstate trains or this pecuniary sacrifice. "Convenience" is an elastic term, and no doubt it would be more convenient to have a train stop every hour at this village, and it would be confessedly inconvenient if no trains at all stopped there. Between these extremes ther is no doubt a broad field of

legislative discretion. There is a degree of inconvenience to which the carrier may not subject the dwellers along its line even for the purpose of paying its operating expenses and making up a fair return on its investment. But that does not help much because these conveniences shade off by imperceptible degrees into conditions, where to the man of moderate means their supply becomes luxury, and their denial no longer a denial of the ordinary conveniences of life. But it also follows that unlimited legislative power in this direction would support legislative confiscation. Two hundred inhabitants, allowing for the ordinary percentage of infants, sick, and incapacitated, would ordinarily represent a very small number of persons able to travel or diposed to travel on a railroad. The statute must be tested by its general requirements, not only as regards the village of Cochrane with a population of 260, but the other little villages along this line. I think from the standpoint of convenience a village of 200 or 260 people that has one passenger train each way per day, together with a mixed freight or accommodation train, is not badly served. The hours of arrival and departure of these several trains must be adjusted with reference to the length of the run and the number of stations, and these hours will necessarily be more convenient at some stations than at others, but that is unavoidable. I consider the case to be within the rule of and governed by Herndon v. Chicago, etc., Ry. Co., 218 U. S. 135, 30 Sup. Ct. 633, 54 L. Ed. 970, and cases cited, and for this reason also the order appealed from should be reversed. This statute regulating the use of appellant's property is in the nature of a police regulation, and it appears to me to be an unnecessary and unreasonable interference with interstate commerce, and therefore invalid. I also think that the basis of regulation is improper and unlawful, and that the necessities or conveniences of a village cannot be measured by the number of interstate trains which pass through or by it. State v. Redmon, 134 Wis. 89, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 126 Am. St. Rep. 1003, 15 Ann. Cas. 408. The requirement must be based upon necessity or convenience of the public. I also think the proceedings above herein described and the penalties imposed by tatute conflicting and contradictory as they must appear on account of the unusual procedure adopted in this case should warrant the reversal of the judgment appealed from because of such interference. Considering each failure to stop each train each way as an offense, the penalties must be enormous when multiplied by the number of days multiplied by the number of small stations on this line.

120 STATE OF WISCONSIN:

In Supreme Court.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff in Error,
vs.
RAILROAD COMMISSION OF WISCONSIN, Defendant in Error.

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above entitled action, except such papers as are omitted pursuant to the stipulation of the parties herein.

That the original writ of error, the petition therefore and order allowing the same, the citation with its service endorsed thereon, the assignment of errors, stipulation and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 4th day of June, A. D. 1913.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of Supreme Court, Wisconsin.

Endorsed on cover: File No. 23,752. Wisconsin Supreme Court. Term No. 198. Chicago, Burlington & Quincy Railroad Company, plaintiff in error, vs. Railroad Commission of Wisconsin. Filed June 16th, 1913. File No. 23,752.

18

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914.

No. 198

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Plaintiff in Error,

vs.

RAILROAD COMMISSION OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

BRIEF OF PLAINTIFF IN ERROR.

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BLAKELY-WARREN PRINTING COMPANY, CHICAGO.

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STATEMENT OF THE CASE.

This case comes here by writ of error from the Supreme Court of Wisconsin, to review the judgment of that court affirming the judgment of the Circuit Court for Dane County in an action to determine the validity of an order of the Railroad Commission of Wisconsin requiring the Railroad Company to stop two of its passenger trains each way, daily, at the station of Cochrane, Wisconsin, pursuant to the provisions of Chapter 483,

Wisconsin Session Laws, 1911, which amends Section 1801, Wisconsin Statutes, so as to read as follows:

> "Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more, through or within one-eighth of a mile of which its line or road runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that extent; and, if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each such station. Every such corporation neglecting or refusing fully to comply with this section, after demand therefor by any resident of such village, shall forfeit not less than twenty-five nor more than fifty dollars for each and every day such neglect or refusal shall continue, one-half to the use of the person prosecuting therefor."

The facts, as found by the Supreme Court, were substantially these:

One Schlosstein, a resident of Cochrane, filed a petition with the Railroad Commission, alleging that the passenger service at said station was inadequate, and praying for an order compelling the Railroad Company to stop two of its passenger trains each way, daily, at said station, as required by statute. A hearing was had before the Railroad Commission, from which it appeared that the passenger service at Cochrane was as follows:

Northbound train No. 91, accommodation freight carrying passengers, daily, except Sunday, due at 10:17 A. M.

Passenger train No. 53, northbound, daily, due at 10:58 A. M.

Passenger train No. 54, southbound, daily, due at 9:09 A. M.; and

Accommodation freight train No. 92, southbound, carrying passengers, daily, except Sunday, due at 1:10 P. M.

Cochrane has a post office, and is an incorporated village of about 260 inhabitants. It has four general stores, two saloons, two lumber yards and planing mills. The village of Buffalo having a population of about 250, lies a short distance west of Cochrane. Alma, the county seat of Buffalo County, having a population of 1,000, is situated 8.3 miles north of Cochrane. Fountain City, having a population of approximately 1,000, lies about eight miles south of Cochrane. All of the limited trains on respondent's line stop at Alma. Two passenger trains, each way, stop daily at Fountain City.

The respondent's road is located on the east bank of the Mississippi River and runs through a territory that is sparsely settled. About ninety per cent. of all the passenger traffic over this line consists of people going from Chicago to St. Paul and points in Minnesota, the Dakotas, and the entire Northwest and Canada. Two trains are run each way, daily, between Chicago and Portland and Seattle. One train leaves Chicago in the morning, and from St. Paul runs over the Northern Pacific line to the Northwest. Another train leaves Chicago in the evening, and from St. Paul goes over the Great Northern line to the Northwest. There are two corresponding trains, eastbound. There is also a train each way daily between Chicago and Minneapolis, known as the Minnesota Limited, which serves the traffic to Minneapolis and St. Paul on the other hand, and to Chicago and St. Louis on the other. In addition to these interstate trains, there is a local train each way, running between Savanna, Illinois, and Minneapolis, Minnesota, which takes care of the traffic in the State of Wisconsin. The westbound train from Chicago to the Northwest by

way of the Northern Pacific line from St. Paul is known as train No. 51, and is composed of standard Pullman and Tourist cars. The number of cars in the train is 12. The corresponding eastbound train is known as train No. 50, and contains the same number of cars. Similar trains routed over the Great Northern line from St. Paul to and from the Northwest are known as trains 49 and 52, respectively, trains 47 and 48 are each known as the Minnesota Limited, and each is composed of one observation car, three standard sleeping cars, one St. Louis standard sleeping car, two Chicago coaches, one combined mail and baggage car, and two baggage cars. Train No. 58 consists of two sleeping cars, and from five to eight baggage and express cars.

All of these interstate trains are heavy and run at a maximum speed of fifty miles per hour in order to make connection with trains for the East at Chicago and with trains for the West at St. Paul. As the distance between Chicago and St. Paul over respondent's line is 33 miles greater than that over the line of the Chicago and North Western Railway Company, and 27 miles greater than that over the line of the Chicago, Milwaukee & St. Paul Railway Company, it becomes necessary for the respondent to operate its trains at a high rate of speed in order to meet the schedule time of its competitors' trains between such points, as well as to make the connections mentioned.

The Railroad Company objected to stopping any more trains because all of its other trains were heavy interstate limited trains, which were run in competition with like trains upon other roads, and if it was required to stop such trains at all stations having a population of 200, it would be impossible to continue them in service as limited trains.

The Railroad Commission stated in its decision that, independent of any statutory provisions on the subject, it would feel constrained to hold that the existing passenger service afforded the Village of Cochrane was adequate, under the circumstances, and that, therefore, interstate trains could not be required to stop at that station, but that since the statute fixed the quantum of passenger service required at every station coming within the classification made, it deprived the Railroad Commission of any discretion in the matter, and an order was entered (Rec., 19), requiring the Railroad Company "to stop one passenger train each way, daily, at Cochrane, in addition to the passenger trains that now stop there."

To review that order an action was brought in the Circuit Court for Dane County, pursuant to the provisions of the statute. In that proceeding by appropriate pleadings and requests for findings of fact and conclusions of law, the Railroad Company insisted that said order of the Railroad Commission was unlawful and unreasonable; that said order and said statute as attemped to be enforced were an unwarranted interference with, and obstruction of, interstate commerce, and that the same were confiscatory and took plaintiff in error's property without due process of law.

The Circuit Court held the order valid and entered judgment dismissing the complaint. From that judgment the Railroad Company appealed to the Supreme Court of Wisconsin, which affirmed the judgment of the Circuit Court. Justices Timlin and Kerwin dissented.

The Supreme Court held that the order made by the Railroad Commission was a lawful order; that the enforcement of the statute would not interfere with interstate commerce, nor result in confiscation of property of plaintiff in error, nor deprive it of privileges guaranteed by the Fourteenth Amendment.

Specification of Errors.

The Supreme Court of Wisconsin erred in deciding:

I.

That Chapter 483 of the Session Laws of Wisconsin, for the year 1911, was not invalid on the ground of its being repugnant to the Constitution of the United States and in contravention thereof.

II.

That said statute, as applied to plaintiff in error, did not deprive it of its property without due process of law, contrary to the provisions of Section 1 to the Fourteenth Amendment to the Federal Constitution.

III.

That said statute, as applied to plaintiff in error, did not unduly obstruct or burden commerce among the several states, in contravention of Section 8 of Article I of the Federal Constitution and of the laws enacted by Congress in pursuance thereof.

IV.

That the order of the Railroad Commission of Wisconsin, dated November 20, 1911, requiring plaintiff in error thereafter to stop one passenger train each way daily at Cochrane, in addition to the passenger trains which then and theretofore stopped at said Cochrane, was neither unreasonable, nor unlawful.

V.

That said order of said Railroad Commission was not an unwarranted interference with, or obstruction of, interstate commerce.

VI.

That said order of said Railroad Commission was not confiscatory and did not take plaintiff in error's property without due process of law, contrary to the provisions of Section 1 of the Fourteenth Amendment to the Federal Constitution.

CHAPTER 483, LAWS OF WISCONSIN OF 1911, (SECTION 1801, WISCONSIN STATUTES), IMPOSES AN UNNECESSARY AND UNLAWFUL BURDEN UPON INTERSTATE COMMERCE, AND IS THEREFORE INVALID.

The extent of the right to control through interstate transportation of passengers by the state legislature, or under orders of the Commission, authorized by the state, has been repeatedly before this court.

Mississippi Railroad Commission v. *Ill. Cent. R. R.*, 203 U. S., 335.

Atlantic Coast Line R. Co. v. *Wharton*, 207 U. S., 328.

Herndon v. *Chicago, Rock Island, etc., R. Co.*, 218 U. S., 135.

Cleveland, etc., Ry. Co., v. *Illinois*, 177 U. S., 514.

Ill. Cent. R. R. Co. v. *Illinois*, 163 U. S., 142.

In the *Herndon case*, the following statement is made:

"The principle to be deduced from these cases is that, where a railroad company has already pro-

> vided ample facilities for the adequate accommodation of the traveling public, such as may be proper and reasonable at any given point, and operates interstate commerce trains carrying passengers through the same places at which such interstate commerce trains do not stop, a state regulation which requires the stopping of such interstate trains, in addition to ample facilities already provided, to the detriment and hindrance of interstate traffic, is an unlawful regulation and burden upon interstate commerce."

That the stopping of any of the existing interstate trains at Cochrane would seriously interfere with interstate traffic can not be disputed. This is admitted in the opinion of the Supreme Court of Wisconsin, where Justice Vinje said:

> "It will be noticed that neither the statute, nor the order of the Railroad Commission requires the plaintiff to stop one of its limited interstate trains. The plaintiff has the option to do that, or to put on an extra train each way daily, which shall stop at Cochrane. To do the former, it is claimed would seriously interfere with its through traffic, as competition is keen and time is of the essence of such traffic. *This no doubt is true.*"

It must be conceded upon this record that plaintiff in error can not consistently with its obligations as an interstate carrier stop any of its through trains. It follows as a necessary conclusion that, unless the service furnished at Cochrane and other stations of about the same importance, is inadequate, the welfare of the traveling public would not be promoted but positively injured by imposing the additional stops contemplated by the statute.

The facts established by the evidence show conclusively that plaintiff in error is operating its through interstate trains at a disadvantage as compared with its competitors having shorter lines running between Chi-

cago, and St. Paul and Minneapolis. The ability of the company to handle its interstate traffic with efficiency would be materially impaired by imposing any additional stops, and to cause one of the interstate trains (each way) to stop at Cochrane and all other villages of about the same size would destroy its usefulness and require its discontinuance, with loss of all the business done by it.

In *Mississippi R. R. Com.* v. *Illinois Central R. R. Co.*, 203 U. S., 335, at 346, it was said:

> "The order can not be viewed alone in the light of ordering a stop at one place only, which might require not more than three minutes, as asserted. It is the question whether these trains can be stopped at all at any particular station when proper and adequate facilities are otherwise afforded such station. If the Commission can order such a train to be stopped at a particular locality under such circumstances, then it could do so as to other localities, and in that way the usefulness of a through train would be ruined and the train turned from a through to a local one in Mississippi. The legislature of a state could not itself make such an order, and it can not delegate the power to a Commission to do so, in its discretion, when adequate facilities are otherwise furnished.
>
> The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between states, both of passengers and freight. A wholly unnecessary, even though a small, obstacle ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals."

It is said, however, by the Supreme Court of Wisconsin that neither the statute, nor the order of the Railroad Commission, requires the plaintiff in error to stop one

of its limited interstate trains, and that an option exists to put on an extra train each way daily which shall stop at Cochrane. If it be conceded, for the sake of the argument, this is a proper interpretation of the statute and the order, still such enforcement of the order would impose an unreasonable and unlawful burden upon interstate commerce. Plaintiff in error unquestionably has the right to operate interstate trains through the Village of Cochrane and similar villages on its line in Wisconsin. The Wisconsin court holds that the statute relates to interstate trains, as well as intrastate, or as it terms them "domestic trains," and, speaking of the statute, it held "If it does not apply to interstate trains, then it does not apply to the plaintiff at all, for it runs no domestic passenger trains in Wisconsin." The effect of the statute then is, as interpreted by the Wisconsin court, to penalize the plaintiff in error for running more than three interstate trains daily through Wisconsin. This follows from the fact that, as interpreted, the fourth interstate train cannot be run, except upon condition that an additional interstate train be stopped at Cochrane, or an additional local train be put on which shall stop there. The result of this is, then, that plaintiff in error is denied its right to operate interstate trains, except upon the conditions imposed by the statute. It therefore becomes quite as much a burden upon interstate commerce to restrict the right to run additional interstate trains, unless additional local trains are put on and stopped, as it would be to require the stopping of interstate trains.

Interstate commerce is burdened when the right to engage in it depends upon conditions imposed by the state, which the state has no power to impose. In this case, if the statute is construed to require the stopping of interstate trains, it is clear from the record that interstate commerce is burdened. If, on the other hand, it is said

at the order and the statute can be complied with by tting on additional local trains, which are stopped at chrane, interstate commerce is also unlawfully bur- ned, because the right to engage in it by putting on the urth interstate train is made to depend upon the run- g and stopping of the additional local trains. This dition the state has no right to impose, and when it ks to impose such condition, it regulates interstate mmerce quite as effectively as though it ordered the pping of interstate trains.

It thus seems clear that the statute not only imposes burden upon interstate commerce, but expressly dis- minates against it. It does not require all railroads the state to operate a given number of local ins, nor does it take any account of the actual eds of the local stations. It merely provides at *if four or more passenger trains are run ch way daily, at least two passenger trains each y each day shall be stopped* at the stations men- ned in the statute. It is entirely conceivable that two lroads might exist in Wisconsin serving the same or ilar local points where the local necessities and de- nds might be identical, and yet the one road would required to stop but one train a day each way, while other road would be required to stop two trains a day ch way, solely because of the greater number of passen- trains which pass over its lines through the given sta- n in a day. The number of these trains in turn might olly depend upon the amount of through interstate siness, as in the case at bar. Here the record shows at the two local trains now run do not pay expenses, nor they, except on the rarest occasions, ever filled to pacity. All the trains run by plaintiff in error are in- state trains, and, except for the two local trains, are ited trains, provided for through interstate traffic. If

then the one road is compelled to stop two trains a day each way at the given station, while the other road is required to stop only one train a day, the conditions being identical, except in relation to the through traffic, there is a clear discrimination against the one road, in favor of the other. And in the case at bar, this discrimination is clearly a discrimination against and a burden upon interstate commerce, for all the plaintiff in error's passenger trains are interstate trains, and it is solely because of the volume of its interstate business and the resulting increase in the number of its trains that the provision of the statute becomes applicable to it.

In other words, the test the statute lays down is not the local needs of the local stations at all, but their train service is made to depend upon, and be in direct relation to, the volume of interstate business passing through. This is so because the number of trains is, of course, governed largely by the volume of the business, and since it appears that the increased volume of the business is interstate, it follows that the test laid down in the statute is applied solely to interstate business. This then is clear discrimination against interstate commerce and a burden upon the same. A road doing a purely local business, with a small number of trains, is held to one requirement, while a road doing a heavy interstate business, serving the same or similar towns, with identical local necessities, is held to a higher and different requirement. We contend that a statute which produces such results as this works an unlawful discrimination against interstate commerce by imposing a greater burden upon the roads engaged in such commerce than upon those engaged in purely local business.

THE FACILITIES FOR CARRYING PASSENGERS AT COCHRANE AND OTHER STATIONS OF ABOUT THE SAME SIZE ARE ADEQUATE TO SUPPLY ALL THE REASONABLE NEEDS OF THE PUBLIC.

The petition to the Railroad Commission complained that the passenger service at Cochrane was inadequate for Cochrane and vicinity, and asked for enforcement of the statute (Chapter 483, Laws of 1911). The Commission took testimony as to adequacy of service and as to the stopping of any of the trains other than the local trains at Cochrane. (Rec., 28-36.) The Commission found that the interstate trains could not be stopped; that the service at Cochrane was adequate, and that from consideration of the earnings appellant would not be justified in putting into service another local train. (Rec., 15 to 19.) But the Commission held that it was deprived of all discretion by the statute, *i. e.;* that it had no authority to consider any of the matters above referred to, such as adequacy of service, stoppage of interstate trains, and unjustifiable expense, and made an order that plaintiff in error stop one passenger train each way daily at Cochrane, in addition to the trains which now stop.

What are adequate facilities is not a novel question in this court. In the case of *Atlantic Coast Line* v. *Wharton, supra,* the following language is used:

> "The term 'adequate or reasonable facilities' is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost."

Further on in the opinion the following language is used by the court:

> "Of course, it is not reasonable to suppose that the same facilities can be given to places of very small population that are supplied to their neighbors who live in much larger communities, and the defendants in error, it may be conceded, make no such demand. No one would assert that one daily train each way between New York and Philadelphia would furnish adequate facilities for the transportation of passengers. Twenty times that number of trains would be necessary, and yet one through train a day, each way, through so small a place as Latta to New York or Tampa would in all probability easily transport all the passengers desiring transportation between these places."

There is no allegation, proof or finding in the record that the service was insufficient for the receipt and carriage of all passengers at Cochrane, or that the equipment of the trains was in any manner unsuitable, nor even that the use of an accommodation freight for the carriage of passengers, in addition to the regular local passenger train was objected to by passengers. The sole complaint is that the trains arrived with such short intervals between them that persons who desired to go to Fountain City, about nine miles south, and Alma, about eight miles north, were unable to go to those places, transact their business, and return on the same day. To what extent residents of Cochrane are put to inconvenience by this does not appear, but it is further complained that the farmers living at a distance from Cochrane, who wish to go to Fountain City or Alma, drive there and back, whereas if the train service were different they would drive into Cochrane, leave their teams there until returning, and use the train service, and thus Cochrane loses the business of housing and feeding the teams be-

tween trains. (Rec., 31.) As Justice Timlin pointedly observes in his dissenting opinion:

> "All of the limited interstate trains stop at Alma, and two passenger trains each way each day stop at Fountain City. This is an important consideration with reference to the adequacy of train service in so far as the rural population near Cochrane is considered."

When two trains are running opposite to each other, one north and the other south, it is inevitable that as we go north and south of the point where they actually meet and pass the times between their arrivals will be increased. Thus from the time-tables, from which the figures at Cochrane are given in the record, we find these two trains nearest together at Trempealeau, where the difference is but twenty-two minutes; going north, at Fountain City, thirty minutes; at Cochrane one hour and eight minutes; at Alma one hour and fifty-seven minutes; at Pepin two hours and fifty-seven minutes, and so on to Prescott, where it is five hours and twenty-nine minutes. Going south from Trempaleau, at Onalaska one hour and six minutes; La Crosse two hours and five minutes, Stoddard two hours and fifty-nine minutes, and so on to Potosi, at the south line of the state, where the difference is eight hours and twenty-three minutes. With two more trains and a readjustment of schedules, preserving a substantially daylight service such as this local neighborhood business requires, it may be possible to lengthen the time between the trains, but not without transferring the same trouble to some other point. In addition to the regular passenger service furnished by the trains 53 and 54, an accommodation freight, carrying passengers, stops regularly at Cochrane. (See Exhibit A, opposite page 14 of record.) The extent and quality of this service by accommodation freight not being complained of here, there

seems to be no good reason why it should not be considered in connection with the regular local passenger trains in deciding upon the adequacy of the entire service, and also its compliance with the statute. A ground of complaint, and the one most strongly urged, is that many persons from Cochrane or vicinity, wishing to go south and to Winona, drive to Fountain City, instead of taking the train to Cochrane, because some of the interstate trains stop at Fountain City.

The total number of passengers, both local and interstate, on the local trains, was in 1911, 54,853, or an average of 150 per day. The total number at Cochrane averaged 10 per day. For these, there were four passenger coaches—two each way—every day, besides the accommodation freights. The trains are seldom filled with passengers, except that on rare occasions they may be full between Alma and Fountain City, and Cochrane. (Rec., 38.)

Was the service reasonable, or could plaintiff in error be reasonably expected, under all the circumstances, to furnish more ample service? Here we let the facts speak for themselves.

From the point at which appellant's road enters the state to the point where it enters Minnesota, it follows closely the east bank of the Mississippi River. It can draw practically no business from the west side of that river, except a little at Winona. The narrow strip along the west side of Wisconsin, which alone it is in a position to serve, is penetrated and tapped by other and competing roads. Of the eight counties through which it passes, in none is it free from direct competition. Going from the south to its northern terminus in the state, it meets everywhere, as shown by state railroad maps, the competition of the C. & N. W.—main line and branches; C., M. & St.

P.—main line and branches; La Crosse and Southeastern; Green Bay and Western; and the C., St. P., M. & O.—main line and one branch.

In this strip of territory, not only the counties but the towns and villages have declined in population during the last ten years, the only point where there has been any substantial increase being the City of La Crosse, where appellant meets competition from four other railroads.

The result of these conditions is that of the entire business of plaintiff in error on its Wisconsin line, only ten per cent. is local. (Rec., 37.) The local business is not sufficient to pay the expenses of the local service furnished at the time when the order was made. (Rec., 38.) The evidence is that the total receipts for two years at Cochrane were, for passengers $3,968.34, and for freight $20,049.83, a total of $24,018.17, or $12,009.08 per year. (Rec., 44.)

The fact that the local trains now running are being operated at a loss should be considered as a circumstance tending to show that it would be unreasonable to require further facilities to be furnished at an increased loss.

Upon this state of facts, we confidently insist that the finding of the Railroad Commission that the service was both adequate and reasonable was the only one which can be upheld, and should be given great weight in passing upon the question of adequacy of service.

In this connection, Justice Timlin said:

> "Two hundred inhabitants, allowing for the ordinary percentage of infants, sick and incapacitated, would ordinarily represent a very small number of persons able to travel, or disposed to travel on a railroad. The statute must be tested by its general requirements, not only as regards the Village of Cochrane, with a population of two hundred and sixty, but the other little villages along this line. I think, from the standpoint of convenience, a village

of two hundred or two hundred and sixty people that has one passenger train each way per day, together with a mixed freight or accommodation train, is not badly served. The hours of arrival and departure of these several trains must be adjusted with reference to the length of the run and the number of stations, and these hours will necessarily be more convenient at some stations than at others, but that is unavoidable. I consider the case to be within the rule of, and governed by, *Herndon* v. *Chicago, etc., Ry. Co.*, 218 U. S., 135, and cases cited, and for this reason also the order appealed from should be reversed. This statute regulating the use of appellant's property is in the nature of a police regulation, and it appears to me to be an unnecessary and unreasonable interference with interstate commerce, and therefore invalid."

THE STATUTE, SO FAR AS IT RELATES TO ADEQUACY OF SERVICE, IS PURELY ARBITRARY AND UNREASONABLE.

We contend that the statute, at least as applied to this case, is arbitrary, unreasonable and void, and that the order made, whether it rests upon the statute or upon the general powers given to the Commission, is confiscatory in that it operates to take appellant's property without due process of law, and that it creates an unwarranted burden upon interstate commerce. It takes no account whatever of any general or particular conditions, whether they in any way affect the general traveling public, or the people of the village itself. If four trains are run daily each way, then two trains each way must be stopped daily, regardless of whether the necessities or convenience of the people of the village require it, or not. If the service furnished is adequate and reasonable and satisfactory to the people at the given station that is immaterial. If four trains are running, two must be stopped. On the other hand, if plaintiff in error should take off one of its trains—even the local one—leaving but

three trains daily each way, no matter what the necessities or convenience of the people of the village might require so far as this law is concerned, they could have no relief. The stopping of interstate trains under this law, no regard being had to the question of reasonable adequacy of accommodations already furnished at the local point, would, under all the decisions, be an interference with interstate commerce, which could not be tolerated. In the case of *Lake Shore, etc., Ry. Co.* v. *Ohio*, 173 U. S., 285, 301, the following language is used:

> "The reasonableness or unreasonableness of a statute is always an element in the general inquiry by the court whether such legislation encroaches upon national authority, or is to be deemed a legitimate exertion of the power of the state to protect the public interests or promote the public convenience."

The utter unreasonableness of this statute, and its want of appropriate relation to public convenience and necessities is seen in the fact that it does not regard the question of adequacy of existing service. It adopts an arbitrary and unreasonable test and gives license to any resident of any one of the eleven villages like Cochrane to begin suit every day to enforce a fine of from $25 to $50, and promises him as an inducement to do so one-half of the fines collected, and this he may do even if every other resident of the village is satisfied with the existing service.

There is nothing in this record to show that any resident of the Village of Cochrane, other than the petitioner Schlosstein, was dissatisfied with the service furnished there.

Justice Timlin in his dissenting opinion said:

> "I also think that the basis of regulation is improper and unlawful and that the necessities or conveniences of a village cannot be measured by the number of interstate trains which pass through or

by it. *State* v. *Redmond*, 134 Wis., 89. The requirement must be based upon necessity or convenience of the public."

THE STATUTE AND ORDER OF THE RAILROAD COMMISSION ARE CONFISCATORY AND TAKE PLAINTIFF'S PROPERTY WITHOUT DUE PROCESS OF LAW, CONTRARY TO THE PROVISIONS OF SECTION ONE OF FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It must be conceded, as admitted upon the record, that plaintiff in error cannot consistently with its obligations as an interstate carrier stop any of its through trains, and is given the alternative of putting on two more local trains, one each way each day. Evidence undisputed is that this will add over $84,000 per year to the deficit of earnings already existing in the local service, amounting to a loss of about $400 per mile for each mile of railroad in the State of Wisconsin. This is to impose a fine of that amount upon plaintiff in error because it runs three interstate trains each way each day. It confiscates the property of plaintiff in error in obedience to a law which has no reason for its existence.

While the mere fact that the company would lose money if it put on two additional local trains would not be sufficient ground for declaring the statute in question unconstitutional, if such trains were required to provide adequate service, we contend that it is quite material when taken in connection with the fact that the local service already furnished along the line of plaintiff in error in the State of Wisconsin results in a loss to the company.

THE STATUTE DEPRIVES PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, SINCE THE PENALTIES ACCRUE WHILE THE QUESTION OF THE VALIDITY OF THE STATUTE, WHICH MUST DEPEND UPON EXTRINSIC FACTS IN EACH CASE, IS UNDETERMINED.

We have pointed out that it was held in the *Herndon case, supra,* and other similar cases, that a State regulation which requires the stopping of interstate trains, in addition to ample facilities already provided, to the detriment and hindrance of interstate traffic, is an unlawful regulation of and burden upon interstate commerce. The power of the State to require such stopping of interstate trains is therefore made to depend upon the adequacy of the existing facilities. This court has recognized in many cases that where the validity of a statute or administrative order depends upon the existence of complicated facts which can be determined only after investigation, an opportunity for judicial investigation must be given before the penal provisions of the Act can become operative. There is a clear distinction between punishing for acts done before, and for those done after the validity of a statute has been settled. (*Cotting* v. *Kansas City Stock Yards Co.,* 183 U. S., 101.) This doctrine has been applied to statutes and orders fixing rates, requiring constructions of spur tracks, etc., that is, in instances where the validity of the order depends upon the ascertainment of certain definite facts, as for example, the reasonableness of the rates, the reasonableness of the order requiring the construction of tracks, or, as in the case at bar, the ascertainment of whether existing facilities are adequate.

In *Ex parte Young,* 209 U. S., 123, at 147, it was said:

> "It is urged that there is no principle upon which to base the claim that a person is entitled to disobey

a statute at least once, for the purpose of testing it
validity without subjecting himself to the penalti
for disobedience provided by the statute in case
is valid. This is not an accurate statement of th
case. Ordinarily a law creating offenses in the na
ture of misdemeanors or felonies relates to a sub
ject over which the jurisdiction of the legislature i
complete in any event. In the case, however, of th
establishment of certain rates without any hearing
the validity of such rates necessarily depends upo
whether they are high enough to permit at least som
return upon the investment (how much it is not no
necessary to state), and an inquiry as to that fac
is a proper subject of judicial investigation. If
turns out that the rates are too low for that pur
pose, then they are illegal. Now, to impose upon
party interested the burden of obtaining a judicia
decision of such a question (no prior hearing havin
ever been given) only upon the condition that if un
successful he must suffer imprisonment and pay fine
as provided in these acts, is, in effect, to close up a
approaches to the courts, and thus prevent any hear
ing upon the question whether the rates as provide
by the acts are not too low, and therefore invali
The distinction is obvious between a case where th
validity of the act depends upon the existence of
fact which can be determined only after investiga
tion of a very complicated and technical characte
and the ordinary case of a statute upon a subject re
quiring no such investigation and over which th
jurisdiction of the legislature is complete in an
event."

As pointed out in *Wadley Southern Ry. Co.* v. *Stat
of Georgia* (U. S. Supreme Court No. 27, October Term
1914, decided January 11, 1915), speaking of the rate
fixed by the statute involved in *Ex parte Young:*

"Those rates had not been established in pur
suance of a plenary power of the legislature, but i
view of constitutional limitations the rates wer
valid only if they were found to be reasonable
Whether they were reasonable or not was not ap
parent on the face of the statute, but was dependen
upon the proof of extrinsic facts."

So in the instant case, the legislature has no plenary power, in view of the constitutional limitations, to stop an interstate train, but the same can be done only where existing local facilities are inadequate. Whether such existing local facilities are adequate or not is not apparent from the face of the statute, but is dependent upon the proof of complicated extrinsic facts in each case. The only way the Railroad Company can test the validity of the statute is to subject itself to the penalties thereof by violating the same. The statute affords it no opportunity for a hearing upon the adequacy of the existing facilities before subjecting it to the statutory penalties. If it be said that in the case at bar an opportunity for a hearing before the Railroad Commission was afforded, the reply is that the Supreme Court held that the Railroad Commission had no discretion in the matter, but must of necessity apply the statute, so that the hearing before the Commission became an idle ceremony so far as any investigation of the adequacy of existing service was concerned.

This court has applied the doctrine of *Ex parte Young*, not only in rate cases like the *Consolidated Gas Case*, 212 U. S., 53, and *Missouri Pacific* v. *Tucker*, 230 U. S., 340, but also in cases like *Missouri Pacific Railway Co.* v. *Nebraska*, 217 U. S., 196. In that case, the statute imposed a fine for the carriers' failure, on demand, to construct spur tracks to elevators. After showing that if the absolute requirement of the statute to build, was to be construed as being applicable only when the demand was reasonable, this court said that even on that construction the railroads must refrain from paying "at the peril of a fine, if they turn out wrong in their guess that in the particular case the court will hold the demand not authorized by the Act. If the statute makes the mere demand conclusive, it plainly cannot be upheld. If it re-

quires a sidetrack only when the demand is reasonable the railroad ought, at least, to be allowed a hearing in advance to decide whether the demand is within the act."

In the case at bar, the statute is lawful only if construed to require the stopping of interstate trains where the existing local facilities are not adequate, and, as held in the case last cited, the railroad ought in such a situation to be allowed a hearing in advance to decide whether the statute is for that reason applicable.

See a full review of the cases in *Wadley Southern Railway Co.* v. *State of Georgia, supra,* where it was said

> "These cases do not proceed upon the idea that there is any want of power to prescribe penalties heavy enough to compel obedience to administrative orders, but they are all based upon the fundamental proposition that under the Constitution penalties cannot be collected if they operate to deter an interested party from testing the validity of legislative rates or orders legislative in their nature. Their legality is not apparent on the face of such orders, but depends upon a showing of extrinsic facts. A statute, therefore, which imposes heavy penalties for violation of commands of an unascertained quality, is in its nature, somewhat akin to an *ex post facto* law since it punishes for an act done when the legality of the command has not been authoritatively determined. Liability to a penalty for violation of such orders, before their validity has been determined, would put the party affected in a position where he himself must at his own risk pass upon the question. He must either obey what may finally be held to be a void order, or disobey what may ultimately be held to be a lawful order. If a statute could constitutionally impose heavy penalties for violation of commands of such disputable and uncertain legality the result inevitably would be that the carrier would yield to void orders, rather than risk the enormous cumulative or confiscatory punishment that might be imposed if they should thereafter be declared to be valid."

THE ORDER AND THE STATUTE DEPRIVE PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW SINCE THEY IMPOSE DOUBLE PENALTIES FOR THE SAME ACT AND FOR VIOLATION OF THE SAME STATUTE.

Section 1797-27 of the Wisconsin statutes provides in part as follows:

> "If any railroad shall * * * fail, neglect or refuse to obey any lawful requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal such railroad shall forfeit and pay into the state treasury a sum of not less than $100, nor more than $10,000 for each offense."

Chapter 483 of the Laws of Wisconsin, 1911, after requiring the stoppage of two passenger trains each way each day under the given conditions, provides a penalty for neglect or refusal to comply with the statute after demand therefor by any resident of a village affected of "not less than $25, nor more than $50, for each and every day such neglect or refusal shall continue, one-half to the use of the person prosecuting therefor."

The plaintiff in error is therefore apparently subject to a double penalty, viz.: one for violation of the Commission's order, of not less than $100, nor more than $10,000, "for each offense," and another penalty, under Chapter 483 of the statutes, of not less than $25, nor more than $50, for each and every day that it omitted to stop two passenger trains each way each day. On this subject, Justice Timlin, in his dissenting opinion said:

> "Under this order of the Commission, the Railroad is liable to a penalty for disobedience thereof, amounting to not less than $100, nor more than $10,000, for each offense. Under Chapter 483, *supra*, it was liable to a penalty of not less than $25, nor

more than $50, for each and every day that it omitted to stop two passenger trains each way each day. Penalties cannot be multiplied or enlarged in this way."

Again, he said:

"I also think the proceeding above herein described, and the penalties imposed by statute, conflicting and contradictory as they must appear on account of the unsual procedure adopted in this case, should warrant the reversal of the judgment appealed from, because of such interference. Considering each violation to stop each train each way as an offense, the penalties must be enormous when multiplied by the number of days, multiplied by the number of small stations on this line."

If it be said that because of the conflict between these penalties it is uncertain whether they both apply, or as to which one of them does apply, then plaintiff in error is deprived of its property without due process of law, because of such uncertainty and indefiniteness in the penalties. Due process of law implies definiteness and certainty of penalty for its disobedience.

If, on the other hand, it be argued that the penalties both apply, then plaintiff in error is deprived of its property without due process of law, because it is subjected to double penalties for the same act and violation of the same statute. As pointed out by Justice Timlin, penalties cannot be multiplied in this way and if the failure to stop each train each way is considered as an offense, the penalties would become enormous when multiplied by the number of days, multiplied by the number of stations on the line with population of more than two hundred. As we have argued above, these enormous penalties are imposed upon plaintiff in error without its having any opportunity for judicial review of the validity of the Act as applied to it, which validity must

depend upon extrinsic facts as to adequacy of existing facilities.

We respectfully contend that for this added reason, the judgment of the Supreme Court of Wisconsin should be reversed.

Conclusion.

Because the order and the statute are unreasonable and unlawful; operate as a discrimination against and a burden upon interstate commerce; deprive plaintiff in error of its property without due process of law, and deny it the guarantees of the Fourteenth Amendment, we contend that the judgment of the Supreme Court of Wisconsin should be reversed.

Respectfully submitted,

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SUBJECT INDEX

	Page
Statement	1
Statutes	2, 3
Argument	3
I. The passenger service furnished to small villages in Wisconsin prior to the enactment of sec. 1801, Wis. stats., was not adequate or reasonable	5
1. The question of the adequacy and reasonableness of a particular service is primarily one for the determination of the State Legislature	7
2. The decision of the highest court of the State, affirming the legislative determination of the question of reasonableness and adequacy of the service required, is well-nigh conclusive here	9
3. The determination by the Wisconsin Legislature and courts is clearly correct	11
Public need and convenience	12
Cost of providing the service	15
II. The statute, sec. 1801, Wis. stats., is not an unlawful interference with interstate commerce	18
1. The statute may be fully complied with by running intrastate trains	18
2. Even if construed to require the stoppage of interstate trains the statute is valid	19

Page

III. Sec. 1801, Wis. stats., is neither arbitrary nor unreasonable 22

IV. Sec. 1801 is valid as an amendment to the charter of the Chicago, Burlington & Northern Ry. Co., a Wisconsin corporation, and plaintiff's predecessor 26

V. Sec. 1801, Wis. stats., is not invalid because of its penalty provisions 32

1. The penalty provisions are severable 35

2. Plaintiff in error has had in this case a hearing on the question of the reasonableness of the service requirements of the statute 36

3. The penalties prescribed for a violation of sec. 1801, Wis. stats., are not excessive 37

Conclusion 38

INDEX OF CASES

	Page
Ashland v. Wheeler, 88 Wis. 607	29
Atchison, T. & S. F. Ry. Co. v. State, 114 Pac. 721	13
Atlantic Coast Line v. Georgia, 234 U. S. 280	7
Atlantic Coast Line v. N. Car. Corp. Comm., 206 U. S. 1	16, 18
Atlantic Coast Line v. Wharton, 207 U. S. 328	5, 19, 25
Attorney-General v. Looner, 111 Mich. 498	29
Attorney-General v. Railway Companies, 35 Wis. 425	27, 28, 29
Borgnis v. Falk Co., 147 Wis. 327	18
Chapin v. Crusen, 31 Wis. 209	28
Chicago, B. & Q. R. Co. v. Railroad Comm., 152 Wis. 654	1, 2, 19, 23, 25
Chicago, M. & St. P. Ry. Co., State v., 136 Wis. 407	20
Chicago, M. & St. P. Ry. Co. v. Milwaukee, 97 Wis. 418	29, 30, 31
Chicago Union Tr. Co. v. Chicago, 65 N. E. 451	16
Cleveland, etc. Ry. Co. v. Illinois, 177 U. S. 514	19
Commonwealth v. Eastern R. Co., 103 Mass. 254	31
Cook v. Milwaukee & St. P. Ry. Co., 36 Wis. 45	27
Cream City R. Co. v. Hilbert, 72 Wis. 184	29
Dewey v. Des Moines, 173 U. S. 193	34
Fairhaven & W. R. Co. v. New Haven, 203 U. S. 379	28
Flint v. Stone-Tracy Co., 220 U. S. 107	35
Gilla Valley Ry. Co. v. Hull, 232 U. S. 94	34
Gladson v. Minnesota, 166 U. S. 427	18

Page

Grand Trunk Ry. v. Mich. R. Comm., 231 U. S. 457 35
Gulf, Colo. & S. F. Ry. Co. v. State, 169 S. W. 385 ..... 12, 38
Hamilton Co. v. Massachusetts, 6 Wall. 632 34
Herndon v. C. R. I. & P. Ry. Co., 218 U. S. 135 ..... 19, 21
Jacobson v. Massachusetts, 197 U. S. 11 4
Jordan Mining Co. v. Societe des Mines, 164 U. S. 261 34
Kenosha, R. & R. I. R. Co. v. Marsh, 17 Wis. 13 ..... 28, 29
La Crosse v. La Crosse G. & E. Co., 145 Wis. 408 29
Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285 ..... 8, 12, 17, 19, 20, 21, 23, 24, 37, 38
Laurel Hill Cemetery v. San Francisco, 216 U. S. 358 10
Madison, etc. Plankroad Co. v. Reynolds, 3 Wis. 287 28
Manitowoc v. Man. & Nthn. Tr. Co., 145 Wis. 13 29
McCall v. Chamberlain, 13 Wis. 637 27
Milwaukee Gaslight Co., State v., 29 Wis. 454 28
Minn., St. P. & S. S. M. Ry. Co. v. Railroad Comm., 136 Wis. 146 29
Minn. & St. L. R. R. Co. v. Minnesota, 193 U. S. 53 19
Minnesota Rate Cases, 230 U. S. 352 35
Mississippi R. Comm. v. Ill. Cent. Ry., 203 U. S. 335 19
Missouri, K. & T. Ry. Co. v. Witcher, 106 Pac. 852 ..... 13, 15
Missouri Pac. Ry. Co. v. Kansas, 216 U. S. 262 ..... 7, 11, 16, 18, 31
Montana Railway Co. v. Warren, 137 U. S. 348 34
Morgans, etc. R. Co. v. Railroad Comm., 30 So. 214 16

	Page
Nazro, et al. v. Merchants Mut. Ins. Co., 14 Wis. 295	28
Northern Pac. Ry. Co. v. Dustin, 142 U. S. 492	31, 32
Northern Pac. Ry. Co. v. Railroad Comm., 140 Wis. 145	29
Ohio Tax Cases, 232 U. S. 576	35
People v. St. L. & C. R. Co., 52 N. E., 292	11, 16
People v. St. L. A. & T. H. Ry. Co., 176 U. S. 512	7
Pick v. Rubicon Hydraulic Co., 27 Wis., 433	28
Pratt v. Brown, 3 Wis. 603	28
Railroad Company v. Hamersley, 104 U. S. 1	31
Railway Comm., State v., 110 Pac. 1075	13
Railway Companies, State v., 128 Wis. 449	27, 28, 29
St. L. & S. F. Ry. Co. v. Gill, 156 U. S. 649	16
St. L. & S. F. Ry. Co. v. Troy, 108 Pac. 753	13
St. L. S. W. Ry. Co. v. State, 134 S. W. 970	11
Shields v. Ohio, 95 U. S. 319	28
Spring Valley Water Works v. Schottler, 110 U. S. 347	28
Stanislaus County v. Irrigation Co., 192 U. S. 201	28
State v. C. M. & St. P. Ry. Co., 136 Wis. 407	20
State v. Milwaukee Gaslight Co., 29 Wis. 454	28
State v. Railway Comm., 110 Pac. 1075	13
State v. Railway Companies, 128 Wis. 449	27, 28, 29
State ex rel. Cream City R. Co. v. Hilbert, 72 Wis. 184	29
State ex rel. N. P. Ry. Co. v. Railroad Comm., 140 Wis. 145	29
Stone v. Illinois Cent. R. Co., 116 U. S. 347	27
United States Express Co. v. Minnesota, 223 U. S. 335	4
Wadleigh Sthn. R. Co. v. Georgia, 235 U. S. 651	36
Water Power Cases, 148 Wis. 124	29
Welch v. Swasey, 214 U. S. 91	10

Page

West Wis. R. Co. v. Trempealeau Co., 35 Wis. 257 29
Whiting v. Sheboygan & F. R. Co., 25 Wis. 167 28
Willcox v. Cons. Gas Co., 212 U. S. 53 35

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1914.

No. 198

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Plaintiff in Error,

v.

RAILROAD COMMISSION OF WISCONSIN,

Defendant in Error.

In Error to the Supreme Court of the State of Wisconsin

BRIEF FOR DEFENDANT IN ERROR

STATEMENT.

The case below, *Chicago, Burlington & Quincy Railroad Company v. Railroad Commission*, 152 Wis. 654, was one originally brought in the Circuit Court for Dane County, Wisconsin, to vacate and set aside an order of the Railroad Commission of Wisconsin (Transcript of Record, p. 14), which required plaintiff in error "to stop one passenger train each way daily at Cochrane, in addition to the passenger trains that now stop there." (Trans. p. 19.)

Such order was made by the Commission pursuant to the duty imposed on it by section 1797-31, Wisconsin Statutes, to enforce "the laws of the state relating to railroads," one of such laws being section 1801, Wisconsin Statutes, which, as amended by Ch. 483, Laws of 1911, requires all railroads running four or more passenger trains each way daily through a village having a post-office and two hundred inhabitants or more to stop "at least two passenger trains each day each way at each and every such station."

The Circuit Court of the State found as a fact that "the passenger service afforded Cochrane when the order in question was made was not adequate or reasonable," (Trans. p. 23), and entered judgment dismissing the action. (Trans. p. 26.)

On appeal to the Supreme Court of the State, the statute prescribing service, on which the Railroad Commission based its order, was held valid and constitutional and the judgment of the Circuit Court was "affirmed on the ground that the order made by the Railroad Commission was a lawful order." (Trans. p. 72; 152 Wis. 654, 673.)

The statutes above referred to provided as follows:

> "Section 1801. Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more, through or within one-eighth of a mile of which its line or road runs, and shall provide the

necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that extent; and, if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every such station. Every such corporation neglecting or refusing fully to comply with this section, after demand therefor by any resident of such village, shall forfeit not less than twenty-five nor more than fifty dollars for each and every day such neglect or refusal shall continue, one-half for the use of the person prosecuting therefor."

"Section 1797-31. The commission shall inquire into any neglect or violation of the laws of this state by any railroad corporation doing business therein, or by the officers, agents or employes thereof, or by any person operating a railroad, and shall have the power, and it shall be its duty, to enforce the provisions of sections 1797-1 to 1797-38, inclusive, as well as all other laws relating to railroads and report all violations thereof to the attorney-general: * * *."

ARGUMENT.

The construction placed by the Supreme Court of Wisconsin on the statute in question is, of course, conclusive here, so that there is now no question but that the proceeding to enforce section 1801, Wisconsin Statutes, was properly instituted before the Railroad Commission; that, if such statute be constitutional,

the Commission's order is valid and within its powers; and that the Circuit and Supreme Courts of the State had jurisdiction of the action to review the order of the Commission. All these questions were necessarily decided in the affirmative by the Supreme Court of the State, and, since they involve merely questions of the construction of State statutes, they are conclusive on this Court.

United States Exp. Co. v. Minnesota, 223 U. S. 335, 342;
Jacobson v. Massachusetts, 197 U. S. 11, 24.

The several questions, (1) whether the statute is an unlawful interference with interstate commerce; (2) whether it is arbitrary or unreasonable; and (3) whether it operates to deprive plaintiff in error of its property without due process of law, all turn upon the fundamental question whether a passenger service less than that required by section 1801, Wisconsin Statutes, is adequate and reasonable for the small villages of Wisconsin, of which Cochrane is typical. This question will, therefore, be first considered.

I.

The Passenger Service Furnished to Small Villages in Wisconsin Prior to the Enactment of Section 1801, Wisconsin Statutes, was not Adequate or Reasonable.

This Court has defined the term, adequate and reasonable facilities, as follows:

> "The term 'adequate or reasonable facilities' is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost."
>
> *Atlantic Coast Line v. Wharton*, 207 U. S. 328, 335.

The conditions surrounding Cochrane were deemed by the Supreme Court of Wisconsin to be typical of the conditions surrounding villages of similar size throughout the State. (Trans. pp. 65, 70.) As regards Cochrane, it appears from the record that it is an incorporated village of 260 inhabitants and with about three thousand people tributary to the station of plaintiff in error there. (Trans. pp. 15, 23.) It has four general stores, two saloons, two

lumber yards and planing mills (Trans. p. 15). Also, a creamery, two hotels, etc. (Trans. p. 30.)

The city of Buffalo, with a population of about three hundred, adjoins Cochrane on the west, the main part of the two places being about a mile apart (Trans. p. 30). Three miles east of Cochrane begins the large and fertile Waumandee Valley, with two big stores and hotels, a big flour mill and a large creamery, which valley does all its railroad business at Cochrane (Trans. p. 27). Alma, the county seat, with a population of over one thousand, is situated eight miles north of Cochrane, and Fountain City, with about the same population, is eight miles south of Cochrane (Trans. p. 15). Winona, Minnesota, with a population of 18,000, is only fifteen miles south of Cochrane.

The passenger service afforded Cochrane is a north-bound passenger train at 10:19 a. m., and one south-bound at 9:09 a. m. "This service was supplemented by the very uncertain service rendered by one freight train each way, whose time of departure was necessarily very uncertain and irregular." (Opinion of Circuit Judge, Trans. p. 24.) This freight train is due at Cochrane, north-bound at 10:58 a. m., and south-bound at 1:10 p. m. (Ex. A., opposite p. 14 of Transcript of Record.)

The freight train may be entirely disregarded because the time of its scheduled arrival at Cochrane is so near that of the passenger that it gives no additional service and because the furnishing of passenger transportation on

such a train is not a compliance with a railroad's duty to furnish adequate passenger service.

> "It can not be said that the carriage of passengers in a car attached to a freight train is a suitable and proper operation of the railroad, so far as the carriage of passengers is concerned."
>
> *People v. St. L. A. & T. H. Ry. Co.*, 176 U. S. 512, 524;
>
> *Missouri Pac. Ry. v. Kansas*, 216 U. S. 262, 273, 280-1.

The proof also showed that "it was impossible for residents of Cochrane and vicinity to go to any point either north or south by train to transact business of any consequence and return on the same day" (Trans. p. 62), and that many people drive to Alma and Fountain City rather than take the train and thus be compelled to spend an additional day in those places (Trans. p. 31).

Further, the evidence showed in full the amount of local and interstate business done at Cochrane and other small stations on the line of plaintiff in error, and also the cost of providing the additional train service required by the statute, (Trans. pp. 71, 42, 46).

1. *The Question of the Adequacy and Reasonableness of a Particular Service is Primarily One for the Determination of the State Legislature.*

> *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 287, 288;

L. S. & M. S. R. Co. v. Ohio, 173 U. S. 285, 296-7.

The cases establishing the foregoing principle might be multiplied almost indefinitely, but a single quotation applying the principle to a statute requiring the stoppage of trains is sufficient.

In *L. S. & M. S. R. Co. v. Ohio, supra*, this Court said: (Italics ours)

> "All questions arising within a State that relate to its internal order, or that involve the public convenience or the general good, are *primarily for the determination of the State*, and that its legislative enactments relating to these subjects, and which are not inconsistent with the state constitution, are to be respected and enforced in the courts of the Union if they do not, by their operation *directly* entrench upon the authority of the United States or violate some right protected by the National Constitution." (173 U. S. 297.)

This rule is peculiarly applicable here because, as pointed out by the Supreme Court of the State (Trans. p. 65), this statute was enacted only after the Railroad Commission of the State had, in a series of orders, held that "passenger service like that given Cochrane was reasonably adequate." The Supreme Court said that, from the enactment of chapter 483, laws of 1911 (sec. 1801, Wis. Stats.), following these rulings of the Commission, "it must be inferred that the legislature deemed it best to exercise its own judgment as to what should be considered reasonably adequate

passenger service for stations containing a population of two hundred or more." (Trans. p. 65.)

As stated by the Commission, "This statute deprives the Commission of any discretion in the matter. It fixes the quantum of passenger service of every station coming within the classification made." (Trans. p. 19.)

The legislature thus determined, by the enactment of this law, that passenger service of less than two trains each way daily stopping at villages of two hundred inhabitants or more, having a post-office, where four or more trains are run each way daily, was not adequate and reasonable. This determination of the legislature must stand under all the authorities unless clearly wrong.

2. *The Decision of the Highest Court of the State, Affirming the Legislative Determination of the Question of Reasonableness and Adequacy of the Service Required, is Well-nigh Conclusive Here.*

After a full trial in the Circuit Court of the State, with all the evidence heretofore summarized before it, and with a full presentation of the amount of business done at all small stations on the line of road of plaintiff in error and of the classes and cost thereof, the Circuit Court determined and found as a fact that the passenger service afforded Cochrane, of one passenger train each way daily, "was not adequate or reasonable." (Trans. p. 23.)

And on appeal, the Supreme Court held that the statute "can not judicially be declared to require more than reasonably adequate passenger service for the stations embraced within its terms." (Trans. p. 72.)

This ruling of the highest court of the State will not be disturbed here unless it is clearly without any ground upon which it can be sustained.

Welch v. Swasey, 214 U. S. 91, 105-6;
Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 365.

In *Welch v. Swasey, supra*, it was said:

"The particular circumstances prevailing at the place or in the State where the law is to become operative; whether the statute is really adapted, regard being had to all the different and material facts, to bring about the results desired from its passage; whether it is well calculated to promote the general and public welfare, are all matters which the state court is familiar with, but a like familiarity cannot be ascribed to this court, assuming judicial notice may be taken of what is or ought to be generally known. For such reason this court, in cases of this kind, feels the greatest reluctance in interfering with the well-considered judgments of the courts of a State whose people are to be affected by the operation of the law. The highest court of the State in which statutes of the kind under consideration are passed is more familiar with the particular causes which led to their passage (although they may be of a public nature) and with the general situation surrounding the subject-matter of the legislation than this court can

possibly be. We do not, of course, intend to say that under such circumstances the judgment of the state court upon the question will be regarded as conclusive, but simply that it is entitled to the very greatest respect, and will only be interfered with, in cases of this kind, where the decision is, in our judgment, plainly wrong." (pp. 105-106.)

3. *The Determination by the Wisconsin Legislature and Courts is Clearly Correct.*

The public need and the cost of furnishing the service are the controlling factors in determining the reasonableness of any service regulation, and of these the former is by far the most important.

St. L. S. W. Ry. Co. v. State, 134 S. W. (Ark.) 970, 971;
Mo. Pac. Ry. Co. v. Kansas, 216 U. S. 262, 278, 279;
People v. St. L. & C. R. Co., 52 N. E. (Ill.) 292, 298.

In the Arkansas case cited, it was said:

"In determining from the testimony, adduced in any given case, whether or not the requirement is reasonable, the primary question to be considered is whether or not such depot is needed in order to serve the public convenience and wants. The mere fact that the establishment and maintenance of such depot would greatly exceed the revenues that might be derived from the business at such place should be considered, but this would not be controlling." (134 S. W. 971.)

Public Need and Convenience.

The public need for a better passenger service at Cochrance has been shown. It seems obvious that at a village of 260 inhabitants, with another village of like size within a mile distant and with 3,000 people tributary thereto, for whom it is the most convenient railway station, there is need of a service that will give opportunity to go to the county seat, only eight miles distant and return the same day and that will permit persons to go to the city of Winona, only fifteen miles distant in the other direction and return the same day. The traveling public need a service that will give opportunity to get into and out of a place the size of Cochrane within twenty-four hours.

A statute requiring the stoppage of four trains each way daily at county seats has been upheld as applied to Meridian, having a population of fifteen hundred, and where three trains each way daily already stopped, the service thus afforded being held to be inadequate.

Gulf, C. & S. F. Ry. Co. v. State, 169 S. W. (Tex.) 385, 387.

Passenger service consisting of only one train each way daily has been held inadequate in the following cases.

As applied to West Cleveland, with a population of 3000.

L. S. & M. S. Ry. Co. v. Ohio, 173 U. S. 285.

As applied to Witcher, having only four or five dwelling houses, etc.

M. K. & T. Ry. Co. v. Witcher, 106 Pac. (Okla.) 852, 853.

As applied to Troy with a population of 300.

St. L. & S. F. R. Co. v. Troy, 108 Pac. (Okla.) 753.

As applied to Blue Creek and Arden having about 200 population each.

State v. Ry. Comm., 110 Pac. (Wash.) 1075, 1082.

As applied to Belva, having 30 inhabitants.

A. T. & S. F. Ry. Co. v. State, 114 Pac. (Okla.) 721.

The inability to go from one point to any other on the company's line and return in less than twenty-four hours indicates an inadequate service for a place the size of Cochrane.

A. T. & S. F. Ry. Co. v. State, 114 Pac. (Okla.) 721.

State v. Ry. Comm., 110 Pac. (Wash.) 1075, 1082.

M. K. & T. Ry. Co. v. Witcher, 106 Pac. (Okla.) 852.

In *State v. Ry. Comm., supra*, the order of the Railroad Commission required certain trains to stop at Blue Creek and Arden. The court said:

"These towns are business centers of some considerable importance, each having approximately 200 or more inhabitants. They are situated in Stevens County south

of Calville, which is the county seat of that county, and on the same line of railway. The stopping of these trains as ordered would enable the residents of these towns to visit their county seat, transact business therein, and return the same day, which otherwise they cannot do with the present train service. There is no doubt of the desirability of this proposed service, so far as public convenience is concerned, at those points. These trains are through trains, making connections with other lines at Spokane on the south and also at other points on the north. The only reason seriously urged against the stopping of these trains as ordered is that it would tend to lengthen the running time of the trains, and that other small towns might demand similar service and thus result in preventing the making of the connections as at present, thus inconveniencing the public more than this proposed service would benefit the public. It does not seem to us, however, that the evidence shows that these stops would result in breaking present connections and we think we are now only called upon to consider the possible conflict between these proposed stops and the other service which might be directly affected thereby. When other stops of this nature directly affect other service, it will be time enough to consider their effect thereon. We cannot say that these orders of the commission are as plainly unreasonable as to cause them to be subject to reversal by the courts."

State v. Ry. Comm., 110 Pac. (Wash.) 1075, 1082.

The service furnished Cochrane is even less than that held to be inadequate for a place of

similar size and location in *M. K. & T. Ry. Co. v. Witcher, supra,* where the court said:

> "With the local trains so run that a party in going from Witcher to Oklahoma City, only the distance of eleven miles and returning by train, requires forty-eight hours, necessitating remaining over in said city during the night, making it more convenient and profitable to make the journey for such distance by private conveyance than by rail to a county seat and a city of its size, this is neither an adequate nor reasonable facility.
>
> "* * * It is true that Witcher is a small town, having only four or five dwelling houses, three store buildings, a gin, elevator, and blacksmith shop, but the adjacent or tributary country is thickly settled and a nearby city of the size of Oklahoma City would naturally be the general trading point of such people. In addition, it is the county seat in which the county offices are located and the people necessarily have frequent occasion to go to transact business arising with such officers."
>
> *M. K. & T. Ry. Co. v. Witcher,* 106 Pac. (Okla.) 852, 853.

Cost of Providing the Service.

Even though the additional service cost the company the amount estimated, $7,000.00 per month (Trans. p. 53), it is in evidence that making the additional stops would not result in causing the road as a whole to be operated at a loss, (Trans. pp. 56-7). So that the fact that

the performance of the required service will cause an incidental loss to the carrier is not controlling.

Atl. C. Line v. N. Car. Corp. Comm., 206 U. S. 1, 25.

The expense of performing the service does not become important in determining the reasonableness of a regulation until it affects the earnings of the line as a whole.

St. L. & S. F. Ry. Co. v. Gill, 156 U. S. 649, 665.

Morgans, etc. R. Co. v. Rd. Comm., 33 So. (La.) 214, 220.

Chic. Union Tr. Co. v. Chicago, 65 N. E. (Ill.) 451, 494.

People v. St. L. & C. R. Co., 52 N. E. (Ill.) 292, 298.

A distinction must be observed between a statute fixing rates which will be unreasonable unless it permits a fair return to the company and one fixing a minimum of service to be rendered to the public, where the expense or loss resulting from compliance with the statute is merely an element—and not the most important one—in determining the question of reasonableness.

Mo. Pac. Ry. Co. v. Kan., 216 U. S. 262, 279.

Atl. Coast Line v. Corp. Comm., 206 U. S. 1, 26.

The present local train is run at a loss, according to the testimony. (Trans. pp. 38, 52-3.) May it then be discontinued and no local service given? On the contrary the State

may require a minimum of such service and where the business done justifies four through trains, it certainly does not seem unreasonable to require two trains to give local service.

L. S. & M. S. Ry. Co. v. Ohio, 173 U. S. 285, 302-3.

In addition the proof does not show that compliance with ch. 483, laws of 1911, would cause plaintiff any loss. The fact that the present local train does not pay may be entirely due to the poor service afforded by it. The testimony shows that many people drive to Alma and Fountain City rather than take the train and thus be compelled to spend an additional day in those places. (Trans. p. 31.) That the ability to go to nearby stations and return the same day would largely increase the travel seems inevitable (Trans. p. 31). Such local trains would also inevitably relieve the through trains somewhat—enable them to decrease the number of stops and otherwise decrease the cost of operation. Nothing but a trial can show just what would be the effect of running such additional train. In the absence of some such definite proof, how can the statute be held unreasonable, when compliance with it *may* result in profit to plaintiff? The tables in the opinion of the Railroad Commission, (Trans. pp. 17, 18), show that Cochrane stands third among the stations listed with reference to freight earnings and eighth with reference to passenger earnings. Note also that Perryville, with a population of 225 and twelfth in order of freight earnings, is third in order of

passenger earnings. Reference to the time card shows the reason. It has the equivalent of two trains each way daily—there is an interval of three to seven hours between the local and freight trains going in the same direction. It is evident that the passenger earnings bear a direct relation to the service given.

Where no one can say with certainty what the practical operation of a law will be, it cannot be held unconstitutional because it *may* operate prejudicially, for "laws cannot be set aside upon mere speculation and conjecture."

Borgnis v. Falk Co., 147 Wis. 327, 356, 357.

II.

The Statute, Section 1801, Wisconsin Statutes, is not an Unlawful Interference With Interstate Commerce.

1. *The Statute May Be Fully Complied With By Running Intrastate Trains.*

It does not require the stoppage of interstate trains or trains engaged in interstate commerce. If limited to intrastate trains no question can arise as to its interference with interstate commerce.

Gladson v. Minn, 166 U. S. 427, 431;
Mo. Pacific Ry. Co. v. Kansas, 216 U. S. 262;
Atlantic Coast Line v. N. C. Corp. Comm., 206 U. S. 1, 19.

2. *Even if Construed to Require the Stoppage of Interstate Trains the Statute is Valid.*

The furnishing of adequate *local* service is the primary duty of a carrier.

Cleveland, etc. Ry. Co. v. Ill., 177 U. S. 514, 521-2;
Minn. & St. L. R. R. Co. v. Minn., 193 U. S. 53, 63;
Miss. R. R. Comm. v. Ill. Cent. Ry., 203 U. S. 335, 346-7;
C. B. & Q. R. Co. v. Railroad Comm., 152 Wis. 654.

Upon this point the Supreme Court of Wisconsin said in this case:

> "The authorities are practically unanimous in declaring that the primary duty of a railroad is to furnish reasonably adequate local service, both domestic and interstate." (152 Wis. p. 664.)

This duty a state may enforce even though the stoppage of interstate trains is thereby compelled.

L. S. & M. S. Ry. Co. v. Ohio, 173 U. S. 285, 301;
Miss. R. R. Comm. v. Ill. Cent. Ry., 203 U. S. 335, 344;
Atl. Coast Line v. Wharton, 207 U. S. 328, 334;
Herndon v. C. R. I. & P. Ry. Co., 218 U. S. 135, 156-7.

In the note to the *Herndon case*, as reported in 54 L. Ed. 970, the rule of the above cases is well summarized as follows:—

> "It is well settled that state regulations which require railway companies to stop their interstate passenger or mail trains at designated stations are repugnant to the commerce clause of the Federal Constitution when—and only when—adequate and reasonable or proper facilities are otherwise afforded such stations. The only task for the court in any particular case is to determine whether or not adequate and reasonable train service is otherwise afforded."

Besides "the mere fact that in some degree interstate commerce is affected by the act of a State legislature is not universally sufficient to condemn that act." It is only a direct—not a mere incidental interference with interstate commerce that is prohibited.

State v. C. M. & St. P. Ry. Co., 136 Wis. 407, 411-3;
L. S. & M. S. Ry. Co. v. Ohio, 173 U. S. 285, 304.

It follows from the foregoing that section 1801, Wisconsin Statutes, is not an unlawful interference with interstate commerce, if the determination of the legislature of Wisconsin and of the Circuit and Supreme Courts of Wisconsin be correct, that reasonable and adequate passenger service for villages like Cochrane, through which four or more passenger trains are run each way daily, requires the stoppage of at least two passenger trains each way each day.

It is no answer to this argument to assert that "the stopping of any of the existing interstate trains at Cochrane would interfere seri-

ously with interstate traffic" (Brief of Plaintiff in Error, p. 8), and that, even if the statute be complied with by running a local train, the effect is to burden interstate commerce because in such situation "plaintiff in error is denied its right to operate interstate trains except upon the conditions imposed by the statute" (Brief of Plaintiff in Error, p. 10). The reply obviously is that, under all the authorities, the State may interfere with interstate commerce to the extent necessary to provide adequate local service. It is only after the railroad company has provided "ample facilities for the adequate accommodation for the traveling public, such as may be proper and reasonable to any given point" (*Herndon v. C. R. I. & P. Ry. Co.*, 218 U. S. 135, 156-7), that the State is without power to require the stoppage of interstate trains. On counsel's argument, any service requirement by a state would be invalid, for, by the same argument, it could be shown to be at least an indirect interference with interstate commerce.

Furthermore, it seems clear that the legislature might have based the service requirements solely on the population of the places at which trains were required to be stopped, without any reference to the number of trains operated by the carrier. Thus, the statute under consideration in *L. S. & M. S. R. v. Ohio*, 173 U. S. 285, based its service requirements solely on the population of the place served, requiring the stoppage of three trains each way, if so many were run daily, at all stations having over 3000 inhabitants. Surely

the carrier cannot complain that, instead of being required to stop two trains, if so many are run daily, it is required to stop such trains only in case four or more are run daily over the line of road. If the statute would be valid if this provision as to four trains had been omitted (as it clearly would be under the decision in the Ohio case), it is clearly not invalid because of the added condition requiring the services only in case the carrier's ability to perform it is shown by the operation of at least four daily trains. Such added condition is for the benefit of the carrier and a concession to its convenience and the needs of through service.

III.

Section 1801, Wisconsin Statutes, is Neither Arbitrary Nor Unreasonable.

Counsel assert that the classification made by the statute is invalid in that it does not properly take into account the needs of the local stations in prescribing the service to be furnished, but improperly bases such requirement on the amount of interstate business done as shown by the number of trains run over the railroad.

In making this argument, counsel lose sight of the fact that the transportation needs of Cochrane and similar villages are not confined to purely intra-state and local traffic. The local service, which it is the carrier's primary

duty to provide, is not merely service from Cochrane to near-by points within the State, but is service between Cochrane and points both within and without the State.

Thus, in *L. S. & M. S. R. Co. v. Ohio*, 173 U. S. 285, this Court said that a state "was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the same state on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places within the State to places beyond its limits, or the convenience of those outside of the State who wished to come into it." (173 U. S. pp. 301-302.)

And the Supreme Court of Wisconsin in this case said that:

> "The evidence discloses that plaintiff's receipts from domestic passenger business at Cochrane for the year 1911 were $985.87 and from interstate business $765.76. At fourteen stations in Wisconsin, including Cochrane, varying in population from 200 to 535, for the same year its receipts from domestic passenger business were $16,179.08 and from interstate business $11,375.38. It will thus be seen that even from such small stations plaintiff's receipts from interstate passenger business is over one third that of its total passenger receipts. When, therefore, additional service is required, it is not accurate to say that it is at the expense of interstate traffic. Such additional service benefits interstate as well as domestic travel, and the state has the right and is in duty bound to see that both are adequately provided. The fact must not be over-

looked that travel from a point in this state to a point in another state or from a point outside the state to a point within it, is just as much interstate travel as is travel through the state between points outside its boundaries. Each kind of interstate as well as domestic travel is entitled to reasonably adequate service, and none is entitled to more at the expense of the other. The interstate passenger traffic at these small stations being a substantial part of their passenger business, the state has the right to make reasonable regulations to promote it and to further the necessities and convenience of interstate passengers." (152 Wis. pp. 671-2.)

The classification created by the law is subject to no fair criticism on the ground that it does not base its requirements of service on facts tending to create a class of stations reasonably entitled to the prescribed service. The size of the place and the presence of a post-office determine, as accurately as any general test can, the need for passenger service. What general test other than population can be suggested for the purpose of making a classification of places entitled to different amounts of service? The statute upheld by this Court in *L. S. & M. S. R. Co. v. Ohio*, 173 U. S. 285, made a classification based on population.

Similarly, the number of trains, through and local, which a railroad finds it profitable to operate certainly afford some basis and, in a general way, a correct one as to the amount of business done and earnings made, and is thus

a fairly accurate general test as to the carrier's ability to furnish and the cost to it of furnishing additional service.

The statute in question thus bases the quantum of service required on the very elements used by this Court to define reasonable and adequate service, i. e., "the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for," etc.

Atlantic Coast Line v. Wharton, 207 U. S. 328, 335.

The Supreme Court of Wisconsin expressly disposed of this question of classification as follows:

> "It will be observed that as a basis for a minimum passenger service the population of a station and the number of passenger trains passing it each way daily are made the main tests. That such tests are germane to the subject of the act can scarcely be doubted. The population of a station is usually not only a fair index of the amount of business the station itself will furnish, but also of that of the population tributary thereto, while the number of passenger trains run daily past a station measures the amount of passenger business done over the road and, in a degree, its ability to furnish additional facilities to the station without financial loss or without undue interference with through traffic. The furnishing of adequate mail facilities for the residents of the village and of the surrounding country was also in the legislative mind, as is evidenced by the provision that the station

must have a post office in order to enjoy the service provided for in the act. So it must be deemed that a proper basis of classification is made by the statute." (152 Wis. 670; Trans. p. 70.)

IV.

Section 1801 is Valid as an Amendment to the Charter of the Chicago, Burlington & Northern Railway Company, a Wisconsin Corporation, and Plaintiff's Predecessor.

The line of road in question was constructed by the C. B. & Northern, a Wisconsin corporation, in 1885. (Trans. p. 11.) That company duly consolidated with a Minnesota corporation of the same name later in the same year (Trans. pp. 53-54), and in 1899 such corporation deeded its railroad to plaintiff, the latter agreeing by the terms of the deed "to equip said railroad or cause same to be equipped and to maintain and operate the same in such manner as to furnish reasonable accommodations to the public * * and to assume all contracts, bonds and other obligations of whatsoever kind * * * of said" Chicago, Burlington & Northern Railroad Co. (Trans. p. 57.)

Even in the absence of the express agreement in the deed, any obligation validly imposed on plaintiff's predecessor is binding on

plaintiff as a condition precedent to its right to operate the railroad in this state.

McCall v. Chamberlain, 13 Wis. 637, 641;
Atty Genl. v. Ry. Cos., 35 Wis. 425, 586, 608;
Cook v. M. & St. P. Ry. Co., 36 Wis. 45, 49;
State v. Ry. Cos., 128 Wis. 449, 505-6;
Stone v. Ill. Cent. R. Co., 116 U. S. 347, 352.

"The Illinois corporation, by going into Mississippi to operate a railroad there, subjected itself to such local legislation as would have been applicable to the corporation owning the road, if no lease had been made."
Stone v. Ill. Cent. R. Co., 116 U. S. 347, 352.

The Constitution of the State of Wisconsin, from the time of its admission into the Union, has always, in section 1, Article XI thereof, provided:

"Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts, enacted under the provisions of this section, may be altered or repealed by the legislature at any time after their passage."

It is generally held that the authority of the legislature under such a reserved power is somewhat broader, as against constitutional

objections urged by the grantee of corporate privileges, than the general police power. Under such a reservation the legislature may make *any* amendment of the corporate charter which is consistent with the object and scope of the corporation and is not unreasonably harsh and oppressive.

Shields v. Ohio, 95 U. S. 319, 324;
Fairhaven & W. R. Co. v. New Haven, 203 U. S. 379, 388-9, and cases cited;
Stanislaus County v. Irrigation Co., 192 U. S. 201:
Spring Valley Water Works v. Schottler, 110 U. S. 347;
Attorney General v. Railroad Cos., 35 Wis. 425, 576;
State v. Railway Cos., 128 Wis. 449, 505.

The decisions of the highest court of the State have always held that section 1, Article XI, of the State Constitution, reserves to the legislature the power to amend or repeal all franchises and privileges emanating directly or indirectly from the legislature.

Madison, etc., Plankroad Co. v. Reynolds, 3 Wis. 287, 296;
Pratt v. Brown, 3 Wis. 603, 611, 615-6;
Nazro, et al. v. Merchants Mutual Ins. Co., 14 Wis. 295, 299-300;
Kenosha, R. & R. I. R. Co. v. Marsh, 17 Wis. 13, 17;
Whiting v. Sheboygan & F. R. Co., et al., 25 Wis. 167, 198;
Pick v. Rubicon Hydraulic Co., 27 Wis. 433, 440;
State v. Milwaukee Gaslight Co., 29 Wis. 454, 461;
Chapin v. Crusen, 31 Wis. 209, 215;

West Wis. R. Co. v. Trempealeau Co., 35 Wis. 257, 270-1;
Attorney General v. Railroad Cos., 35 Wis. 425, 569-574, 576, 579;
State ex rel. Cream City R. Co. v. Hilbert, 72 Wis. 184, 192-4, 195;
Ashland v. Wheeler, 88 Wis. 607, 616;
Chi. M. & St. P. Ry. Co. v. Milwaukee, 97 Wis. 418, 422, 435;
State v. Railway Cos., 128 Wis. 449, 505;
Manitowoc v. Man. & N. Tr. Co., 145 Wis. 13, 28-29;
La Crosse v. La Crosse G. & E. Co., 145 Wis. 408, 415, 417.

Under the reserve power to alter and amend corporate charters, the state may make such requirements as it sees fit. An amendment cannot be held unreasonable unless it be confiscatory or interfere with vested rights or inflict sheer oppression and wrong. The mere fairness or reasonableness of the amendment has no bearing on its validity. "We cannot judge of the policy or fairness of the act. That is for the legislature."

Atty. Genl. v. Ry. Cos., 35 Wis. 425, 580;
M. St. P. & S. S. M. Ry. Co. v. Rd. Comm., 136 Wis. 146, 167;
State ex. rel. N. P. Ry. Co. v. Rd. Comm., 140 Wis. 145, 157, 160;
Water Power Cases, 148 Wis. 124, 146;
Atty. Gen'l. v. Looner, 111 Mich. 498, 506.

The language of the opinion of the State Supreme Court in *Railroad Company v. Marsh, supra*, is pertinent here: (Italics ours)

"Undoubtedly the legislature might, under this power, impose *new duties and new re-*

straints upon corporations in the prosecution of enterprises already undertaken. And provisions of this nature would be binding whether assented to or not." (P. 17.)

In *C. M. & St. P. R. Co. v. Milwaukee*, 97 Wis. 418, the Supreme Court of Wisconsin said: (Italics ours)

> "It may be laid down as established beyond reasonable controversy that railroad corporations are subject to all such reasonable regulations as may from time to time be prescribed by legislative authority, pursuant to the police power incident to the sovereignty of the state, and *are also subject to the power reserved under the constitution, to alter or amend corporate charters.*" (97 Wis. p. 422.)

It cannot be doubted but that the state as a condition of granting the charter to the C. B. & Northern Ry. Co., might have required the minimum of service now required by section 1801. Under the power to alter and amend, it may make such requirement now. The only object on the part of the state in granting a railroad the right to build its line through the state, is to accommodate the people of the state and it is obvious that this cannot be done unless the railroad will stop its trains within the state. That the legislature may provide in granting its charter or by amendment under the reserved power, for a minimum number of such stops within the state, as a condition of granting the right to operate in the state, seems evident.

Comm. v. E. R. Co., 103 Mass. 254, 256-9;
Ry. Co. v. Hamersley, 104 U. S. 1, 4;
N. P. Ry. Co. v. Dustin, 142 U. S. 492, 503-4;
Mo. Pac. Ry. v. Kan., 216 U. S. 262, 274-5;
C. M. & St. P. R. Co. v. Milwaukee, 97 Wis. 418, 422.

In the Massachusetts case, a statute requiring the establishment of a station and the stoppage there of two trains each way each day was held to be a valid exercise of the reserved power to alter and amend corporate charters, the court saying:

"If the directors of a railroad were to find it for the interest of the stockholders to refuse to carry any freight or passengers except such as they might take at one end of the road and carry entirely through to the other end, and were to refuse to establish any way stations or do any business for that reason, though the road passed for a long distance through a populous part of the state, this would be a case manifestly requiring and authorizing legislative interference under the clause in question. And on the same ground if they refuse to provide reasonable accommodation for the people of any smaller locality, the legislature may reasonably alter and modify the discretionary power which the charter confers upon the directors, so as to make the duty to provide the accommodation absolute. Whether a reasonable ground for interference is presented in any particular case is for the legislature to determine; and their determination on this point must be con-

clusive. * * * It (the act) is a modification of the charter within the fair interpretation of the power reserved to the legislature in the charter, and merely requires them to provide what the legislature regards as a reasonable accommodation to the public in a particular locality where they are using property which they have taken for that purpose."

Comm. v. Eastern Rd. Co., 103 Mass. 254, 258-9.

The above language is quoted and approved in *N. P. Ry. v. Dustin*, 142 U. S. 492, 503-4.

V.

Section 1801, Wisconsin Statutes, is not Invalid Because of its Penalty Provisions.

This question now raised for the first time was not presented to or passed upon by the Court below, nor is it one mentioned in the assignment of errors herein (Trans. pp. 5-6). It is not in any way suggested upon the complaint (Trans. pp. 10-14), filed in the trial court. In the complaint it is only alleged that the statutes and order are "void in so far as it provided that if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every station containing two hundred inhabitants or more. That the provisions of said law, if carried into effect, would require the plaintiff to stop two of its limited through

trains at thirteen additional stations in the State of Wisconsin, and that the requiring of such additional stops would be an unwarranted interference with interstate commerce." (Trans. p. 14.)

Neither is there any reference to the penalty provisions of the statute or claim with respect thereto made in the plaintiff's request for findings of fact and conclusions of law, or in plaintiff's exceptions to the findings and conclusions of the trial court, so as to suggest or present the question to the State Supreme Court.

The question of penalties was for the first time suggested by anyone in this case in the dissenting opinion of Mr. Justice Timlin, filed only after the decision and opinion of the Court had been rendered and filed. Mention of the matter in this dissenting opinion is not to be taken as indicating that the question was presented to the Court on brief or argument or in any way. Nor did the plaintiff in error attempt to bring the question of validity as affected by the penalty provisions under review in the State Court, as it might have done, by motion for rehearing. The short time intervening since the receipt of the brief of the plaintiff in error prevents a full consideration of this question as to the validity of section 1801, Wisconsin Statutes, on account of the penalty provisions therein contained.

We submit that plaintiff in error's claim based upon the penalty provisions of section 1801 is within the principle of the rule that

errors not presented and pressed in the court below will be taken as waived and cannot be raised in the first instance in this Court.

Dewey v. Des Moines, 173 U. S. 193, 199;
Hamilton Co. v. Massachusetts, 6 Wall. 632;
Montana Ry. Co. v. Warren, 137 U. S. 348, 351;
Jordan Mining Co. v. Societe des Mines, 164 U. S. 261, 264;
Gilla Valley Ry. Co. v. Hull, 232 U. S. 94, 98.

In *Montana Ry. Co. v. Warren, supra*, errors were assigned in the Supreme Court of Montana, but not noticed on the briefs filed in that court. This Court refused to consider such errors here, saying:

> "It is fundamental that when the judgment of a court is challenged in error, its rulings alone are open to consideration. Of course, if the trial court had no jurisdiction, that is a matter which is always open, and the attention of the court of last resort may be called thereto in the first instance; but mere matters of error may always be waived, and they are waived when the attention of the reviewing court is not called to them. Our conclusion, therefore, is that our inquiry in this case is only in relation to the matters presented to and reviewed by the Supreme Court of the Territory." (137 U. S. pp. 351-2.)

1. *The Penalty Provisions are Severable.*

This is an action to set aside the order of the Railroad Commission of Wisconsin requiring plaintiff in error to "stop one passenger train each way daily at Cochrane, in addition to the passenger trains that now stop there." (Trans. p. 19), so that the service given at that point should comply with the requirements of section 1801, Wis. Stats. The action is not one brought to recover the penalties prescribed for a disobedience of the order of the Commission or for a violation of the statute. In such situation, the validity or invalidity of the penalty provisions of the statute is immaterial, for even if void they are severable and the balance of the law may stand.

Willcox v. Cons. Gas Co., 212 U. S. 53;
Flint v. Stone-Tracy Co., 220 U. S. 107, 177;
Minnesota Rate Cases, 230 U. S. 352, 380;
Grand Trunk Ry. v. Mich. R. Comm., 231 U. S. 457, 473;
Ohio Tax Cases, 232 U. S. 576, 594.

In *Flint v. Stone-Tracy Co., supra*, this Court said, of the argument that the penalties were so high as to violate the Constitution:

> "No case is presented involving that question, and, moreover, the penalties are clearly a separate part of the act and whether collectible or not may be determined in a case involving an attempt to enforce them." (220 U. S. 177.)

2. *Plaintiff in Error has had in this Case a Hearing on the Question of the Reasonableness of the Service Requirements of the Statute.*

Counsel argue that "where the validity of a statute or administrative order depends upon the existence of complicated facts which can be determined only after investigation, an opportunity for judicial investigation must be given before the penal provisions of the act can become operative." (Brief of Plaintiff in Error, p. 21.)

This argument is obviously beside the point in this case, for no question is here presented as to the penalties provided for the violation of either the statute or the order of the Commission. As already shown, the penalty features of section 1801 are severable and even if void do not affect the validity of the balance of the law.

Furthermore, the proceeding by which obedience to the statute was sought to be compelled has afforded the plaintiff in error a full hearing on the question of the reasonableness of the requirement. Such hearing was given and had before the Railroad Commission of Wisconsin and in the courts of the State in the statutory action brought to review the order of the Commission. The very cases cited by counsel hold that such a hearing on the question of reasonableness is sufficient to sustain the penalty provisions of the law.

Wadleigh Sthn. R. Co. v. Georgia, 235 U. S. 651, 667-9.

The Ohio law sustained by this Court imposed penalties for its violation without any provision for a determination of the question of the reasonableness of the service requirement in advance of the imposition of the penalties.

L. S. & M. S. R. Co. v. Ohio, 173 U. S. 285, 286.

Yet that law was sustained and that, too, in an action brought to recover the statutory penalty.

3. *The Penalties Prescribed for a Violation of Section* 1801, *Wisconsin Statutes, are not Excessive.*

There is no showing made that the plaintiff in error has failed to comply with the order of the Railroad Commission of Wisconsin. From all that appears from the record, plaintiff in error may have installed the service required by that order at or prior to the time that the order became effective. Consequently, no question is here presented as to whether the penalties prescribed for a violation of an order of the Commission may be enforced in addition to those prescribed by the statute for a violation of section 1801.

The penalty provided by section 1801, Wisconsin Statutes, is not less than twenty-five nor more than fifty dollars for each and every day that the company shall neglect or refuse after

demand to comply with the section. Such penalties may not be condemned as excessive.

L. S. & M. S. R. Co. v. Ohio, 173 U. S. 285;

Gulf, Colo. & S. F. R. Co. v. State, 169 S. W. (Tex.) 385, 386, 388.

In the Ohio case, *supra*, a failure to stop the prescribed number of trains made the company and its officers liable to "a forfeiture of not more than one hundred nor less than twenty-five dollars," (173 U. S. 285).

And in the Texas case, *supra*, a statute providing a penalty of five thousand dollars for every violation of the order of the Railroad Commission was held valid with respect to an order requiring compliance with a statute for the stoppage of trains where penalties of $22,400 were assessed at the rate of $100 for each of two hundred twenty-four failures to stop particular trains, (169 S. W. 385).

Authorities might be indefinitely multiplied to the same effect, but the foregoing seem sufficient to demonstrate that no fair criticism can be made of the penalty provision of section 1801, especially in view of the fact that the question as to the validity of the statute on this ground is quite clearly not involved in the present action.

In conclusion, the attention of the Court is particularly directed to the able opinion of the State Supreme Court, by Mr. Justice Vinje, printed in the transcript herein at pages 63 to 72. This opinion fully meets all

the objections raised to the validity of the statute in question, other than those based on the penalty features thereof. It is submitted that the reasoning of said opinion clearly establishes that the judgment of the State Court upholding the validity of the order involved herein and of section 1801, Wisconsin Statutes, should be affirmed.

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CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY *v.* RAILROAD COMMISSION OF WISCONSIN.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN

No. 198. Argued March 12, 1915.—Decided April 12, 1915.

Where an order of a state railroad commission requiring interstate trains to stop at certain stations is based, not on its discretion, but on the requirements of a state statute, which has been sustained by the state court as a proper exercise of the power of the State, this court must pass upon the validity of the statute.

A State may require of carriers adequate local facilities even to stoppage of interstate trains or rearrangement of their schedules; but when local requirements have been met, the obligation of the carrier is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce, whether the order be by the legislature itself or by an administrative body.

This court may determine whether local facilities furnished by a carrier are sufficient, that fact being necessarily involved in determining the Federal question whether an order affecting interstate trains does or does not amount to a regulation of, and interference with, interstate commerce.

The statute of Wisconsin requiring interstate trains to stop at villages of a specified number of inhabitants without regard to the volume of business at that place does amount to a regulation of, and interference with, and is a burden upon, interstate commerce under the commerce clause of the Federal Constitution.

A railroad cannot escape a duty by pleading the expense of its performance; that expense, however, may be considered.

Unless explicitly so declared by the legislature of the State, this court will not regard every general law of the State applicable to corporations as an amendment to their charters.

This court will presume that where the highest court of the State has sustained a statute as constitutional on other grounds than as an amendment to the charter of a corporation affected thereby, it did not regard the statute as such an amendment.

To hold that corporations are subject to the police power of the State is quite another thing from holding that every general law is an amendment to their charters.

152 Wisconsin, 654, reversed.

THE facts, which involve the validity of an order of the Wisconsin State Railroad Commission requiring the stoppage of interstate trains at a local station and the constitutionality of the statute on which it was based, are stated in the opinion.

Mr. Robert Bruce Scott and *Mr. Andrew Lees*, with whom *Mr. Chester M. Dawes* was on the brief, for plaintiff in error.

Mr. Walter Drew, with whom *Mr. W. C. Owen* was on the brief, for defendant in error:

The passenger service furnished to small villages in Wisconsin prior to the enactment of § 1801, Wisconsin statutes, was not adequate or reasonable.

The question of the adequacy and reasonableness of a particular service is primarily one for the determination of the state legislature.

The decision of the highest court of the State, affirming the legislative determination of the question of reasonableness and adequacy of the service required, is wellnigh conclusive here.

The determination by the Wisconsin legislature and courts is clearly correct.

Section 1801, is not an unlawful interference with interstate commerce.

The statute may be fully complied with by running intrastate trains.

Even if construed to require the stoppage of interstate trains the statute is valid.

Section 1801 is neither arbitrary nor unreasonable.

Section 1801 is valid as an amendment to the charter

of the Chicago, Burlington & Northern Ry. Co., a Wisconsin corporation, and plaintiff's predecessor.

Section 1801 is not invalid because of its penalty provisions.

The penalty provisions are severable.

Plaintiff in error has had in this case a hearing on the question of the reasonableness of the service requirements of the statute.

The penalties prescribed for a violation of § 1801, are not excessive. Numerous authorities are cited in support of these contentions.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Error to review a judgment of the Supreme Court of Wisconsin sustaining an order of the railroad commission of that State requiring under a law of the State the railroad company to stop two of its passenger trains, each way daily, at the station of Cochrane.

The statute under which the order was made is as follows:

"Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing two hundred inhabitants or more, through or within one-eighth of a mile of which its line or road runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that extent; and, if four or more passenger trains are run each way daily, at least two passenger trains each day each way shall be stopped at each and every such station. Every such corporation neglecting or refusing fully to comply with this section, after demand therefor by any resident of such village, shall forfeit not

less than twenty-five nor more than fifty dollars for each and every day such neglect or refusal shall continue, one-half to the use of the person prosecuting therefor." Wisconsin Session Laws, 1911, amending § 1801.

The order was made in pursuance of a petition filed with the commission by an inhabitant of the town, alleging the inadequacy of the passenger service and praying for relief under the statute. The facts presented to the commission are, as stated by the Supreme Court, as follows:

"The passenger service at Cochrane was as follows: Northbound train No. 91, a freight, carrying passengers, daily, except Sunday, due at 10:17 a. m.; passenger train No. 53, north-bound, daily, due at 10:58 a. m.; south-bound passenger train No. 54, daily, due at 9:09 a. m.; and freight train No. 92, south-bound, carrying passengers, daily, except Sunday, due at 1:10 a. m. It is admitted that Cochrane has a post office. Further facts shown by the hearing are thus stated in the decision of the Railroad Commission: 'Cochrane is an incorporated village of about 260 inhabitants. It has four general stores, two saloons, two lumber yards and planing mills. The village of Buffalo, having a population of about 250, lies a short distance west of Cochrane. Alma, the county seat of Buffalo County, having a population of 1,000, is situated 8.3 miles north of Cochrane. Fountain City, having a population of approximately 1,000, lies about eight miles south of Buffalo. All of the limited trains on respondent's line stop at Alma. Two passenger trains each way daily stop at Fountain City. The respondent's road is located on the east bank of the Mississippi river, and runs through a territory that is sparsely settled. About 90 per cent. of all the passenger traffic over this line consists of people going from Chicago to St. Paul and points in Minnesota, the Dakotas, and the entire Northwest and Canada. Two trains are run each way daily between Chicago and

Portland and Seattle. One train leaves Chicago in the morning, and from St. Paul runs over the Northern Pacific line to the Northwest. Another train leaves Chicago in the evening, and from St. Paul goes over the Great Northern line to the Northwest. There are two corresponding trains eastbound. There is also a train each way daily between Chicago and Minneapolis, known as the Minnesota Limited, which serves the traffic to Minneapolis and St. Paul on the one hand, and to Chicago and St. Louis on the other. In addition to these interstate trains, there is a local train each way running between Savanna and Minneapolis, which takes care of the traffic in the state of Wisconsin. The west-bound train from Chicago to the Northwest by way of the Northern Pacific line from St. Paul is known as train No. 51, and is composed of standard Pullman and tourist cars. The number of cars in the train is 12. The corresponding east-bound train is known as No. 53, and contains the same number of cars. Similar trains routed over the Great Northern line from St. Paul to and from the Northwest are known as trains 49 and 52, respectively. Trains 47 and 48 are each known as the Minnesota Limited, and each is composed of one observation car, three standard sleeping cars, one St. Louis standard sleeping car, two Chicago coaches, one combined mail and baggage car, and two baggage cars. Train No. 58 consists of two sleeping cars, and from five to eight baggage and express cars. All of these interstate trains are heavy, and run at a maximum speed of 50 miles per hour in order to make connection with trains for the East at Chicago and with trains for the West at St. Paul. As the distance between Chicago and St. Paul over respondent's line is 33 miles greater than that over the line of the Chicago & Northwestern Railway Company, and 27 miles greater than that over the line of the Chicago, Milwaukee & St. Paul Railway Company, it becomes necessary for the respondent to

operate its trains at a high rate of speed in order to meet the schedule of time of its competitors' trains between such points as well as to make the connections mentioned.'"

The commission, expressing its view of the case presented, said: "Independent of any statutory provision on the subject, we should feel constrained to hold that the existing passenger service afforded the village of Cochrane was adequate under the circumstances, and that, therefore, interstate trains could not be required to stop at that station." And further: "This statute deprives the commission of any discretion in the matter. It fixes the quantum of passenger service for every station coming within the classification made."

The railroad company thereupon filed a petition in the Circuit Court of Dane County to set aside the order of the commission. The petition set forth the interstate character of its road, attacked the validity of the law and the order of the commission and represented their effect to be, if carried out, to stop two of its limited trains at thirteen additional stations in the State, and that such requirement would be an unwarrantable interference with interstate commerce.

The Circuit Court found that the passenger service at Cochrane was not adequate or reasonable and that the order of the commission was a reasonable exercise of the power vested in the commission, and entered a judgment dismissing the petition of the railroad company.

The Supreme Court of the State affirmed the judgment, 152 Wisconsin, 654. The court, however, disagreed with the Circuit Court in the view that the commission had exercised its discretion. The Supreme Court decided that such power was not vested in the commission nor exercised by it, and further decided that the trial court could not make an "order based upon the original exercise of its own discretion," and that the only jurisdiction con-

ferred upon it was "to pass upon the lawfulness or reasonableness of the railroad commission's order." And it was said, "In the instant case, therefore, since the railroad commission did not make an order based upon its discretion, but one based upon the statute, the only question presented by the action was the lawfulness of the order, which, of course, raised the question of the constitutionality of § 1801, Wisconsin Stats. 1911. And that question is the only one the appeal presents upon the merits." In other words, as we understand it, the statute expressed the legislative judgment of what facilities were necessary under the conditions described by the statute and left no discretion to the commission or the courts, but "deemed it best," to quote the court, "to exercise its own judgment as to what should be considered reasonably adequate passenger service for stations containing a population of 200 or more." We are brought, therefore, to a consideration of the statute and its measure.

The statute includes, necessarily, the Supreme Court held, interstate passenger trains and clearly excludes accommodation freight trains; and, so viewing it, the Supreme Court pronounced it a proper exercise of the power of the State.

In reviewing the decision we may start with certain principles as established: (1) It is competent for a State to require adequate local facilities, even to the stoppage of interstate trains or the re-arrangement of their schedules. (2) Such facilities existing—that is, the local conditions being adequately met—the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And this, whether the interference be directly by the legislature or by its command through the orders of an administrative body. (4) The fact of local facilities this court may determine, such fact being necessarily involved in the determination of the Federal

question whether an order concerning an interstate train does or does not directly regulate interstate commerce, by imposing an arbitrary requirement. *Gladson* v. *Minnesota*, 166 U. S. 427; *Lake Shore R. R.* v. *Ohio*, 173 U. S. 285; *Atlantic Coast Line* v. *Nor. Car. Corp. Comm.*, 206 U. S. 1; *Mo. Pac. Ry.* v. *Kansas*, 216 U. S. 262; *Cleveland &c. Ry.* v. *Illinois*, 177 U. S. 514; *Mississippi R. R. Comm.* v. *Ill. Cent. R. R.*, 203 U. S. 335; *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328.

Bearing these propositions in mind, let us consider the test of the statute. The statute expresses, it is said, the legislative judgment of the conditions of its application and would seem to preclude a consideration of anything else. In other words, the test of the adequacy or inadequacy of the local facilities is determined by the statute and their sufficiency as so determined becomes the question in the case. What, then, is the test? Every village having 200 inhabitants or more and a post office, and within one-eighth of a mile of a railroad, must be given by such railroad the accommodation of one passenger train each way, each day, if trains be run to that extent, and at least two trains if four or more passenger trains be run.

The test, on first impression, is certainly quite artificial. The effect of it is that the number of trains is not necessarily determined by the local needs of a village but, it may be, by the needs of other places; not by the demands of local travel but, it may be, by the demands of interstate travel and automatically to be increased as interstate travel increases. This is pointedly so in the case at bar for the railroad runs only interstate trains. It, however, is said that the population of a village is not only a fair index of its business but also of its tributary population, and that the number of passenger trains run daily measures the amount of passenger business done and, in a degree, the ability of the railroad to furnish additional facilities

to the station without financial loss or without undue interference with through traffic.

And it is urged that the statute contemplates an increase of facilities to the interstate business of the villages as well as to their local business, and a comparison of receipts from the respective businesses at Cochrane and other villages shows, it is said, that the railroad receipts from interstate passenger business is over one-third that of its total passenger receipts, and, therefore, it is not accurate to say that the additional service required is at the expense of interstate traffic.

The record, however, contains no complaint of insufficient interstate facilities. The complaint which induced the proceeding before the railroad commission was of the deficiency of local facilities. Residents of Cochrane and its vicinity, it was charged, were unable to go north or south from that village by rail and return the same day, and to display the extent of the asserted inconvenience the population tributary to Cochrane was represented to be 3,000. And this was adverted to by the Supreme Court as typical of the condition at other villages, though the court recognized that "the statute must stand or fall upon its main scope and upon its general application to villages throughout the State, and not upon its particular application to Cochrane."

We have seen what the "main scope" of the statute is, but to the actual population of every village must be added, it is said, a tributary population as the cause and justification of the statute. We may assume such outlying population, but we cannot assume definite transportation needs and a certain and invariable measure of accommodation for them. This must be established in each instance. In the present case it appears that the railroad runs through a sparsely settled country, that 90% of its business is interstate, and that the trains assigned to intrasate business are not self-sustaining. The revenue

at Cochrane from the passenger traffic for the year ending July, 1911, was only $1,751.63, of which $985.57 was from intrastate and $765.76 from interstate business. And yet for the local traffic, already insufficient to defray the expense of its service, there are required under the fixed and resistless test of the statute two additional trains, the expense of which will be $84,000.00 a year. And in mentioning the expense we do not wish to intimate that expense is determining but only to be considered. A railroad cannot escape a duty by pleading the expense of its performance.

But it is said that increased accommodation may bring an increase of revenue. If we may so suppose, may we further suppose that the increased receipts will defray the increased expense? It is by such generalities and inferences that the statute is attempted to be supported, and we are asked to accept their vagueness as against the actual situation. The complaint is, as we have seen, that persons residing at Cochrane cannot go north or south by rail and return the same day. Such condition might be corrected by an alteration of schedules or, if that present difficulties on account of the length of the road or the necessities of the traffic, by the stopping of one train either on signal or regularly; and such accommodation has been ordered and held sufficient in cases cited by the commission, as we shall presently see. But the imperative requirement of the Wisconsin statute precludes such accommodation or any accommodation short of its own measure of two additional trains a day each way, though the local needs may be satisfied with less.

Of course, there would be some convenience at times in two extra trains—indeed, in more than two—and they may be desired; but desire is not a test of requirement, nor is convenience, absolutely considered. There is a traffic to be considered which does not originate at Cochrane and its convenience cannot be put out of view. Besides, as

said by Timlin, J., in his dissenting opinion "'Convenience' is an elastic term, and no doubt it would be more convenient to have a train stop every hour at this village, and it would be confessedly inconvenient if no trains at all stopped there. Between these extremes there is no doubt a broad field of legislative discretion." This court has also felt and expressed the difficulty of giving an exact definition to "adequate and reasonable facilities." "It is a relative expression," it was said, "and is to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodation asked for, and to all other facts which would have a bearing upon the question of convenience and cost." *Atlantic Coast Line* v. *Wharton*, *supra*, p. 335.

These, then, are the factors, and we do not put out of view the difficulties which infest the case, but, considering them all and the deference due to state legislation, we are constrained to hold the Wisconsin statute invalid. It does not determine service by the volume of the business of the villages of the State but by the requirements of business elsewhere, and limits such requirements and, it may be, prevents them by the imposition of conditions which preclude their fulfillment. This is illustrated by the facts of the pending case. The interstate trains of the railroad are required by the necesssities of its interstate business. It is in competition with shorter roads, and the speed of its trains, which cannot be safely increased, and their schedule time are a necessity in this competition. This conformity to conditions must be strained or embarrassed and, it may be, prevented in order to give greater facilities than one train a day each way to villages having a post office and 200 inhabitants, not necessarily because they are not properly served but seemingly to give them a larger division of service.

The Supreme Court conceded that it was "no doubt true" that to require the railroad to stop one of its limited interstate trains would seriously interfere with its through traffic, as competition "was keen and time was of the essence of such traffic." The court, however, said that neither the statute nor the order of the railroad commission requires the railroad to stop one of its limited trains, but it has the option of doing that or of putting on an extra train; and *Lake Shore Ry.* v. *Ohio, supra,* is cited to sustain the alternative. Undoubtedly the alternative can be required, but only if the local facilities be inadequate. In other words, to justify the requirement the local conditions must justify the extra facility. *Oregon R. R. & N. Co.* v. *Fairchild,* 224 U. S. 510, 528. The alternative imposed as a condition of retaining interstate trains simply because of their number would be a burden upon interstate commerce, as we have already pointed out. And this is recognized by the cases cited by defendant in error.

In *State* v. *Railroad Commission,* 110 Pac. Rep. (Wash.) 1075, an order required an additional passenger train from a town of 5,000 or 6,000 people, and having a business by the railroad, of $20,000 per month for freight and about $800 for passengers, to connect at another place. The railroad attempted to remove the complaint of want of adequate facilities by an additional service between the places but not that required by the order. It was decided that the additional facility was not sufficient and that the order was reasonable, the railroad not showing that the service "ordered by the commission would be unreasonably burdensome upon the railway company by being operated at a loss." There was no question of interference with interstate commerce.

Another order of the commission in the same case was reviewed. It required a passenger train to stop on flag at a certain spur, the railway company to elect which of its trains it would stop. The court said that in view

of the population centered there and the very slight service required of the railway company, the order could not be pronounced by the courts to be unreasonable. And the same judgment was declared of other orders requiring a north-bound train at one place and a south-bound train at another to stop on flag. Against these last orders there was a charge that they would tend to lengthen the running time of the trains, which were through trains (it did not appear that they were interstate), and that other towns would demand similar service and thus result in preventing the making of connections and thereby inconvenience the public. To which it was replied that the evidence did not show that the stopping would result in breaking the then connections and that it would be time enough to consider the effect of other stops when they should be ordered.

In *Atchison &c. Ry.* v. *State*, 114 Pac. Rep. (Okla.), 721, an order of the railroad commission of the State required a passenger train to stop on flag at a station called Belva. That village had a population of 30, but the country around it was thickly settled and persons could reach the county seat only by means of the railroad. The conditions were in some respects like those in the case at bar. The court said that the evidence in support of and against the order consisted of generalities and conclusions rather than of facts necessary to enable the court to determine the reasonableness and justness of the order, but the court, yielding to the presumption due to the action of the commission, and there being no evidence that the trains were fast ones or that the stopping of them would interfere with their schedule or connections with other trains, sustained the order. And the court gave consideration to the fact that the trains were required to stop only when there were passengers desirous of entering or leaving them, and that no pecuniary loss would be entailed on the railway or its interstate connections hampered.

In *Missouri &c. Ry.* v. *Town of Wilcher*, 106 Pac. Rep. (Okla.), 852, trains were required to stop on flag. The order was sustained, it not appearing that there would be any pecuniary loss to the railway or that the order would "reasonably prevent or hamper the interstate connections contemplated."

Gulf, Col. &c. Ry. v. *State*, 169 S. W. Rep. (Texas), 385, was an action for penalties imposed by a statute of the State upon any railroad failing to obey an order of the commission of the State. The order required the railway company to stop two numbered trains at the town of Meridian, a county seat. It had a population of 1,500. The defense of the company was an attack on the order as an unlawful and direct interference with interstate commerce, the trains being interstate trains, and the local facilities it was asserted, being adequate. The case was considered in view of the established principles which we have stated and the order was sustained, the court deciding that the local facilities were inadequate and the order not a direct interference with interstate commerce.

Gladson v. *Minnesota*, 166 U. S. 427, sustained a statute which required every railroad corporation to stop all regular passenger trains running wholly within the State at all county seats long enough to take on and discharge passengers. The applicable principles were discussed and it was said that an order which entailed but a trifling expense and a few minutes of time was a reasonable exercise of the police power and could not be considered as a taking of property without due process of law or an unconstitutional interference with interstate commerce.

The other cases cited, not being closely applicable, need no comment. In those we have reviewed, it will be observed, the orders were made after investigation by administrative officers and the facilities required were adjusted to the local needs, not by an arbitrary formula prescribed in excess of such needs.

It is contended by defendant in error that the statute is valid as an amendment to the charter of the Chicago, Burlington & Northern Railway Company, a Wisconsin corporation, and plaintiff in error's predecessor. This contention seems not to have been urged on the Supreme Court, and we may, therefore, decline to consider it; and, besides, we would be very averse to deciding that, without explicit declaration, every general law of the State applicable to corporations is enacted as an amendment to their charters. If the Supreme Court of the State had so thought it would have accepted that short way to the decision of the case and not have occupied itself with other and more complex questions. It is one thing to decide that corporations are subject to the police power of the State, and quite another to hold that every general law is an amendment to their charters. See 97 Wisconsin, 418.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.